United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLEE

74-1550

To be argued by
PAUL J. CURRAN

B

United States Court of Appeals
FOR THE SECOND CIRCUIT

Docket No. 74-1550

P/S

UNITED STATES OF AMERICA,

Appellee,

—v.—

CARMINE TRAMUNTI, LOUIS INGLESE, DONATO CHRISTIANO, ANGELO MAMONE, JOSEPH DINAPOLI, FRANK PUGLIESE, JOSEPH CERIALE, JOHN GAMBA, VINCENT D'AMICO, FRANK RUSSO, WARREN C. ROBINSON, WILLIAM ALONZO, HATTIE WARE, JOHN SPRINGER and HENRY SALLEY,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES OF AMERICA

PAUL J. CURRAN,
United States Attorney for the Southern District of New York, Attorney for the United States of America.

THOMAS M. FORTUIN,
THOMAS E. ENGEL,
FREDERICK T. DAVIS,
JEREMY G. EPSTEIN,
LAWRENCE S. FELD,
JOHN D. GORDAN, III,
Assistant United States Attorneys, Of Counsel.

TABLE OF CONTENTS

PAGE

TABLE OF CASES

PAGE

PAGE

PAGE

PAGE

PAGE

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 74-1550

UNITED STATES OF AMERICA,

Appellee,

—v.—

CARMINE TRAMUNTI, LOUIS INGLESE, DONATO CHRISTIANO, ANGELO MAMONE, JOSEPH DiNAPOLI, FRANK PUGLIESE, JOSEPH CERIALE, JOHN GAMBA, VINCENT D'AMICO, FRANK RUSSO, WARREN C. ROBINSON, WILLIAM ALONZO, HATTIE WARE, JOHN SPRINGER and HENRY SALLEY,

Defendants-Appellants.

BRIEF FOR THE UNITED STATES OF AMERICA

Preliminary Statement

This is an appeal by Carmine Tramunti, Louis Inglese, Donato Christiano, Angelo Mamone, Joseph DiNapoli, Frank Pugliese, Joseph Ceriale, John Gamba, Vincent D'Amico, Frank Russo, Warren C. Robinson, William Alonzo, Hattie Ware, John Springer and Henry Salley from judgment of conviction entered on April 22, May 2, May 3, May 7, May 10, and May 22, 1974 in the United States District Court for the Southern District of New York after an eight-week trial before the Honorable Kevin T. Duffy, United States District Judge, and a jury.

Indictment 73 Cr. 1099, filed December 6, 1973, charged the fifteen appellants and seventeen other defendants in

thirty counts with various violations of the federal narcotics laws.*

Count One charged the fifteen appellants and seventeen other defendants with a conspiracy to violate the federal narcotics laws from January 1, 1969 until December 6, 1973, the date of the filing of the Indictment.

Count Two charged Louis Inglese with a continuing criminal enterprise in violation of Title 21, United States Code, Section 848. Count Three charged Inglese and Joseph DelVecchio with the sale of 30 bags of heroin in June, 1969. Count Four charged Inglese and DelVecchio with selling one-half ounce of heroin in June, 1969. Counts Five and Six charged Inglese with selling one ounce quantities of heroin in October, 1969. Count Seven charged Benjamin Tolopka with receiving one-quarter kilogram of cocaine in August, 1970. Count Eight charged Inglese with selling one-quarter kilogram of heroin in September, 1970. Counts Nine and Ten charged Dominick Lessa with the sale of one-half kilogram of heroin and five-eighths of a kilogram of cocaine in October, 1970. Counts Eleven through Thirteen charged Inglese, DelVecchio and Donato Christiano with selling three-quarter kilogram quantities of heroin in December, 1970. Count Fourteen charged Inglese with selling one ounce of heroin in February, 1971. Count Fifteen charged Pat Dilacio with possession of one-eighth kilogram of heroin with intent to distribute in May, 1971. Count Sixteen charged Frank Pugliese and Frank Russo with possession with intent to distribute of one-eighth kilogram of heroin in May, 1971. Count Seventeen charged Joseph Marchese with possession of one-half kilogram of heroin with intent to distribute in June, 1971. Count Eighteen charged

---

* Indictment 73 Cr. 1099 superseded Indictments 73 Cr. 931 and 73 Cr. 334 filed October 3, 1973 and April 13, 1973, respectively.

Dilacio and Pugliese with possession of one-half kilogram of heroin with intent to distribute in September, 1971. Count Nineteen charged John Springer with possession of one-eighth kilogram of heroin with intent to distribute in November, 1971. County Twenty charged Pugliese and Dilacio with possession of one-half kilogram of heroin with intent to distribute in September, 1971. Count Twenty-one charged Joseph DiNapoli and Dilacio with possession of two kilograms of heroin with intent to distribute in December, 1971. Count Twenty-two charged Carmine Pugliese and Dilacio with possession of three kilograms of heroin with intent to distribute in January, 1972. Counts Twenty-three and Twenty-four charged Louis Inglese, DelVecchio, Thomas Lentini and Joseph Ceriale with possession of three kilogram quantities of heroin with intent to distribute in July and October, 1972. Count Twenty-five charged George Toutoian and Vincent D'Amico with possession of one-quarter kilogram of heroin with intent to distribute in November, 1972. Count Twenty-six charged Frank Russo with possession of one-quarter kilogram of heroin with intent to distribute in January 10, 1973. Count Twenty-seven charged Carmine Tramunti, Inglese, DelVecchio and Ceriale with possession of three kilograms of heroin with intent to distribute in May, 1973. Count Twenty-eight charged Inglese and Lentini with possession of one-half kilogram of cocaine with intent to distribute in May, 1973. Count Twenty-nine charged Lentini and Lessa with possession of one-eighth kilogram of cocaine with intent to distribute on May 30, 1973. Count Thirty charged Basil and Estelle Hansen with possession of 767 grams of heroin with intent to distribute on October 4, 1973.* Six counts were severed prior to trial.**

---

* Counts Three through Fourteen charged offenses occurring prior to May 1, 1971 in violation of 21 U.S.C. §§ 173 and 174. Counts Fifteen through Thirty charged offenses occurring on or after May 1, 1971 in violation of 21 U.S.C. §§ 812, 841(a)(1) and 841(b)(1)(A).

** Five counts—Counts Nine, Ten, Fifteen, Twenty-two and Thirty—charged defendants who were not on trial. Count Twenty-

[Footnote continued on following page]

Trial began on January 21, 1974 as to eighteen defendants.* During the course of the trial the case against one defendant was severed.**

Prior to submitting the case to the jury, Judge Duffy entered a judgment of acquittal with respect to Joseph Marchese and dismissed Count Twenty-seven. On March 13, 1974, after five days of deliberations, the jury found the fifteen appellants guilty on all counts in which they were named. A mistrial was declared with respect to Benjamin Tolopka.

Judge Duffy imposed the following sentences:

Defendant	*Term of Imprisonment*
Carmine Tramunti	15 years consecutive to the sentence imposed by Judge Bauman on Indictment 73 Cr. 514.
Louis Inglese	20 years on Counts One, Three, Four, Five, Six, Seven, Eight, Twelve, Thirteen and Fourteen and 15 years on Counts Twenty-three,

---

six, charging appellant Frank Russo with distributing one-quarter kilogram of heroin on January 10, 1973, was severed at the request of the Government. Count Two was severed during trial.

* Joseph DelVecchio pleaded guilty to Counts One, Eleven, Twelve, Thirteen, Twenty-three, Twenty-four and Twenty-seven. DelVecchio was sentenced to 15 years imprisonment on Count One and 5 years on the remaining counts, the sentences to run concurrently, and a special parole term of 3 years. The entire sentence is to run concurrently with the sentence previously imposed on Indictment 73 Cr. 229 by Judge Gagliardi.

Thomas Lentini pleaded guilty to Counts One and Twenty-three. He was sentenced to 15 years imprisonment on each count and a special parole term of 10 years. The entire sentence is to run concurrently with the sentence imposed on Indictment 73 Cr. 327.

Thomas Dawson pleaded guilty to Count One. He has not yet been sentenced.

** Defendant Al Green fell down a flight of stairs and fractured his skull during the trial.

Defendant	*Term of Imprisonment*
	Twenty-four and Twenty-eight, all to run concurrently with each other, except that the sentence on Count One to run consecutively to the sentence on the remaining counts. The entire sentence to run consecutively to the sentence previously imposed by Judge Palmieri on Indictment 73 Cr. 761.
Donato Christiano	10 years
Angelo Mamone	10 years
Joseph DiNapoli	15 years on Count One and 5 years on Count Twenty-one to run consecutively; the entire sentence to run concurrently with the sentence imposed on Indictment 72 Cr. 1021 by Judge MacMahon.
Frank Pugliese	10 years
Joseph Ceriale	3 years
John Gamba	8 years
Vincent D'Amico	5 years
Frank Russo	6 years
Warren C. Robinson	3 years
William Alonzo	8 years
Hattie Ware	five years, execution suspended, five years probation.

John Springer	15 years
Henry Salley	5 years

Unless otherwise indicated, all sentences were imposed concurrently on all counts upon which each defendant was convicted. Russo and Gamba were sentenced to special parole terms of six years following their imprisonment. The remaining defendants, except Hattie Ware, received special parole terms of three years.

All defendants are currently incarcerated serving these or other sentences except for Hattie Ware, who is on probation, and Angelo Mamone, Joseph Ceriale and Warren C. Robinson, who were released on bail pending appeal.

Statement of Facts

The Government's Case

1. Introduction: Nature of the Conspiracy and Role of the Appellants

The evidence at trial established that from December 1969 until December 1973 appellants and their co-defendants and co-conspirators were members of an extensive network for the high-level distribution of heroin and cocaine in New York City, in New Jersey, and in Washington, D.C.

Appellants Louis Inglese and Joseph DiNapoli directed the operations of the conspiracy from headquarters in Bronx County. Each combined with a common importer source, co-conspirator Vincent Papa, and each controlled the mixing, storage, and distribution of kilogram quantities of high grade narcotics to wholesale suppliers who further diluted and resold heroin in both New York and Washington, D.C. Appellant Carmine Tramunti provided essential financing for this conspiracy. The evidence accounted for the distribution of multi-kilogram quantities of heroin and a lesser amount of cocaine by members of the conspiracy.

The fifteen appellants contributed to the conspiracy's success in the following varied roles:

Carmine Tramunti	—a financier for the purchase of narcotics who directed the posting of bail to keep the operation flourishing.
Louis Inglese, a/k/a "GiGi," a/k/a "The Whale"	—supervised and directed the purchase, processing, and sale of heroin and cocaine.
Joseph DiNapoli	—supervised, directed, and financed the purchase and sale of heroin.
Donato Christiano a/k/a "Finnegan"	—aided Inglese by distributing and diluting heroin and collecting money from dealers in the area of the Beach Rose Social Club.
Frank Pugliese a/k/a "Butch" a/k/a "Georgie"	—Distributed heroin for DiNapoli and collected money as the proceeds of the narcotics sales until his imprisonment in October, 1971.
Angelo Mamone a/k/a "Butch"	—DiNapoli's partner in the narcotics business; also participated in Inglese's narcotics operation by counting money, settling disputes between purchasers of Inglese's heroin, and screening customers.
Joseph Ceriale a/k/a "Joe Red"	—Supplied the Inglese organization with quantities of "mannite" to dilute for resale multi-kilogram quantities of heroin.

Vincent D'Amico a/k/a "Vincent Rizzo"	—Received cocaine and a quarter kilogram of heroin from Frank Stasi, an Inglese aide and wholesaler.
Frank Russo	—Received heroin from Pugliese and Barnaba, who distributed for both Inglese and Pugliese; received heroin from Harry Pannirello and Patty Dilacio, wholesalers for DiNapoli, and sold heroin on three occasions to an undercover agent in January, 1973.
John Gamba a/k/a "Sinatra"	—Served as a "stash" and mixed narcotics for Pugliese, Dilacio, and Pannirello between November, 1971 and the Spring of 1972.
John Springer a/k/a "Hank"	—Purchased narcotics from Frank Pugliese, from John Barnaba, and, after Pugliese turned over conduct of his narcotics business to Pannirello and Dilacio, from Harry Pannirello.
Hattie Ware	—Used her apartment for numerous transfers of narcotics from Pugliese and delivered narcotics for Dilacio and Pannirello to distributors.
William Alonzo a/k/a "Butch Ware"	—Participated in the narcotics distribution network operating out of Hattie Ware's apartment and received heroin from Harry Pannirello.

Warren Robinson a/k/a "Alan" —A Washington, D.C. distributor, who received quantities of narcotics from Pugliese and co-conspirators Thomas Dawson, Harry Pannirello, and James Provitera throughout 1971 and 1972.

Henry Salley —Received and participated in deliveries of narcotics both alone and with Robinson on three occasions in the Fall of 1972.

Five major participants in the conspiracy testified to its range, operations, and personnel. These principal witnesses were: John Barnaba, Frank Stasi, Harry Pannirello, Thomas Dawson, and James Provitera.

2. John Barnaba

a) The Beach Rose Social Club Group—Inglese, DelVecchio, Christiano, and Mamone

In the late 1960s John Barnaba, who had considerable prior experience in the narcotics trade, was in the business of raising and training dogs. This occupation brought him frequently to an animal hospital on the Boston Post Road in the Bronx where he became well acquainted with the severed defendant Richard Forbrick, who was employed there (Tr. 1241-42).* In December, 1969 on one of Barnaba's hospital visits Forbrick asked if Barnaba could obtain narcotics and, when he repeated this inquiry during the following months, Barnaba suggested that Forbrick tell him when he was ready to buy (Tr. 1243).

---

* "Tr." refers to the trial transcript; "H." refers to the transcript of pre-trial hearings; "GX" to government exhibits; "DX" to defendants' exhibits; and "Br." to the brief of the specified defendant.

In July, 1970 Barnaba happened to meet the appellant Louis Inglese, whose nicknames were "Gigi" and "The Whale." Barnaba, who had known Inglese for some 15 years, asked if Inglese could supply him with "goods". Inglese said that he could and told Barnaba that he could be contacted at the Beach Rose Club, located at 3203 Wilkinson Avenue in the Bronx. Inglese added that in his absence Barnaba could deal with either appellant Donato Christiano ("Finnegan") or defendant Joseph DelVecchio ("Joe Crow") (Tr. 1243-46).

The following month at the animal hospital Forbrick ordered from Barnaba a quarter kilogram of heroin and a quarter kilogram of cocaine for his two customers, who were respectively unindicted co-conspirator Paul Di Gregorio ("The Arrow") and the defendant Benjamin Tolopka (Tr. 1247-50). That evening in the Beach Rose Club Barnaba placed Forbrick's order with Inglese, who set prices of $5,500 for the heroin and $3,000 for the cocaine (Tr. 1252). Barnaba left the club, met Forbrick back at the animal hospital, and then returned to the club, where Inglese introduced him to Inglese's partner DelVecchio (Tr. 1252-53). Inglese told Barnaba to drive down the street and await delivery (Tr. 1253). About twenty minutes later DelVecchio and Christiano drove together to where Barnaba was parked and Christiano passed the narcotics to Barnaba (Tr. 1254).

Barnaba delivered the cocaine directly to Tolopka at Tolopka's home and the heroin to Forbrick at the animal hospital. The next day Forbrick agreed to pay Barnaba $500 for every quarter kilogram delivered and he gave Barnaba $8,500 in small bills (Tr. 1256-61). When Barnaba delivered this money to Inglese at the club, Inglese told him that on future transactions payment had to be in advance of delivery (Tr. 1262).

In September, 1970, Barnaba, at Forbrick's request, ordered another quarter-kilogram of heroin from Inglese at the club. Barnaba received $6,000 in small bills from Forbrick, kept $500, and paid Inglese the agreed price of $5,500 for this heroin. After Inglese and Christiano counted the money, Christiano left the club, and upon his return Inglese delivered the heroin to Barnaba, who brought it to Forbrick (Tr. 1297-1300).

In October, 1970 Barnaba, having learned that Inglese's narcotics were in short supply, purchased narcotics for Forbrick twice from severed defendant Dominick Lessa (Tr. 1305-1334). One of Forbrick's customers for this narcotics was Paul DiGregorio (Tr. 1331-34). During his negotiations for these drugs Barnaba told Lessa that Inglese's narcotics prices were more reasonable (Tr. 1321-22). Lessa replied that his drugs were of higher quality. He explained that both he and Inglese had the same source—unindicted co-conspirator Vincent Papa—and that Papa gave him pure narcotics but gave Inglese diluted or "cut" narcotics, which were only half pure (Tr. 1322).

In the following month, November, 1970, Barnaba met with Inglese and DelVecchio at the Beach Rose Club, and Inglese told him that drugs were again available (Tr. 1334-36). Shortly after this meeting, Barnaba filled separate orders from Forbrick with two separate purchases of narcotics negotiated with Inglese at the club. The first transaction involved a quarter kilogram each of heroin and cocaine for which Barnaba paid Inglese $8,500. These drugs were delivered to Barnaba by Christiano and DelVecchio (Tr. 1336-41). The second deal was for a quarter kilogram of heroin for which Barnaba paid Inglese $5,500. Frank Stasi,* assisted by Christiano, delivered this narcotics (Tr. 1353-56).

---

* Frank Stasi was a government witness at trial.

In late November, 1970 Barnaba again paid Inglese at the club another $5,500 in small bills he received from Forbrick for another quarter kilogram of heroin (Tr. 1360). This time Inglese placed the money on the bar in the club, called to the appellant Angelo Mamone, and Inglese and Mamone then counted the money (Tr. 1360, 1645-49). Later the same night Barnaba went as directed to the backyard of Inglese's residence in the Bronx, where he took delivery of the heroin from Christiano in the presence of Inglese and DelVecchio (Tr. 1362).

In December, 1970 Barnaba paid Inglese $3,500 he had received from Forbrick for an eighth of a kilogram of heroin (Tr. 1363-64). When, after ten days or more, Inglese was unable to supply the heroin, Forbrick asked Barnaba to get back the $3,500 (Tr. 1367-68). Barnaba went to the Beach Rose Club, where he told Inglese of Forbrick's concern over the money. Barnaba suggested that Inglese meet Forbrick, both in order to allay Forbrick's fears and to make it possible for Forbrick to deal directly with Inglese should something happen to Barnaba (Tr. 1368). Inglese replied that he did not want to meet Forbrick but, when Mamone, who was listening, assured: "he was all right, . . . he knew his wife, . . . he was okay, there was nothing wrong with him", Inglese relented (Tr. 1368-69). After Mamone had vouched for Forbrick, Barnaba introduced Forbrick to Inglese at the club and Forbrick accepted Inglese's suggestion that he await delivery (Tr. 1369). After additional delay in delivery of this order, Barnaba, at Forbrick's urging, recovered the $3,500 from Inglese and returned it to Forbrick (Tr. 1373-74).

On one occasion while Barnaba was at the club with Inglese and Christiano, a man named Ralph "The General" Tutino started to leave the club. Inglese asked Tutino if he were going to see "this guy'. Tutino explained that he was and that he would try to "pull twelve packages off" (i.e., twelve kilograms of heroin) (Tr. 1371-72). After

Tutino departed, Inglese told Christiano that "this guy" was co-conspirator Vincent Papa. Christiano said that he doubted Tutino would be successful (Tr. 1372).

In the first part of 1971 Barnaba worked as a used car salesman. He resumed his narcotics dealings in June, 1971, when a man named "Burke" visited the car lot in the Bronx where Barnaba was working. Burke said that Forbrick had sent him and that he wanted to buy an eighth of a kilogram of heroin. Barnaba, after checking with Forbrick, took $3,000 from Burke and thereafter went to the Beach Rose Club, where he purchased an ounce of heroin and three ounces of diluting material called "mannite" from Inglese for $2,000. Barnaba mixed the heroin and the mannite and delivered this narcotics the next day to Burke at the used car lot (Tr. 1421-25, 1649-53).

A few days later Barnaba learned that two men had come to the lot looking for him, had threatened the owner with a gun, and had demanded to know where Barnaba lived. Barnaba then telephoned Burke, who told him that the quarter kilogram of heroin was no good, that he had thrown it out, and that he wanted his money back. Barnaba refused to return the $3,000. A few days later an angry Burke unsuccessfully sought Barnaba out at his home (Tr. 1425-6, 1654-56). Barnaba went to the Beach Rose Club and told Inglese of Burke's threats. Inglese assured Barnaba that the heroin was of good quality and that he should not be concerned about Burke (Tr. 1427, 1662-64).

About a month later Barnaba again mentioned the Burke affair to Inglese at the club. This time Mamone was also present. Mamone told Barnaba that Burke was his "customer" and that Burke owed him $25,000 or $30,000. Mamone told Barnaba that he would get in touch with Burke and try to "straighten out" Barnaba's problem (Tr. 1427, 1665-67). Two or three days later outside the club

Mamone informed Barnaba that he had told Burke to deduct the $3,000 from the money Burke owed Mamone. Mamone said that now Barnaba owed him the $3,000 (Tr. 1427-28).* Mamone's intervention with Burke was evidently successful, and Barnaba never heard from him again (Tr. 1671).

b) DiNapoli's narcotics operation: Frank Pugliese, Russo, Springer, Gamba, and Mamone

In July or August, 1971 Barnaba met appellant Frank "Butch" Pugliese outside the Beach Rose Social Club. Barnaba complained that he was "doing bad" and Pugliese said that he could help out (Tr. 1430). The next day Barnaba met Pugliese at Izzy's Luncheonette in the Bronx. From there they drove to the Bronx residence of appellant John "Hank" Springer, where Pugliese introduced Springer to Barnaba and informed Springer that thereafter he should purchase his narcotics from Barnaba (Tr. 1429-1432).

A short time later Pugliese introduced Barnaba to two of his associates in the narcotics trade, Harry Pannirello ** and defendant Pat Dilacio. Pugliese, who was soon to go to jail, told Pannirello and Dilacio that they should supply Barnaba with heroin on consignment at an agreed price of $25,000 per kilogram (Tr. 1433-1435, 1825).

A few nights later, in late August or early September, 1971, Barnaba filled Springer's order for one-eighth of a kilogram of heroin. Barnaba, who obtained the heroin from Dilacio, was paid $3,500 by Springer and realized $500 on the transaction (Tr. 1435-1438).

---

* Unknown to Mamone or Barnaba this meeting was photographed by a Detective assigned to the Bronx County District Attorney's Office. Six photographs of Barnaba and Mamone were received in evidence and were identified by Barnaba as photographs of this meeting. The photographs were taken on August 20, 1971 (GX 20-20E Tr. 909, 914, 1429).

** Pannirello testified at trial as a Government witness.

In late October and November, 1971 Barnaba, on three separate occasions, sold one-eighth kilogram quantities of heroin to Springer. Each time Springer paid Barnaba $3,500 (Tr. 1440-1450, 3299-3307). Barnaba had previously obtained this heroin from Dilacio, who had delivered it to him at the express direction of Pugliese (Tr. 1449-1451).

Before Pugliese entered jail in October 1971, he and Barnaba met appellant Frank Russo at Izzy's. Russo ordered one-eighth of a kilogram of heroin from Pugliese. That night Pugliese gave this heroin to Barnaba, who in turn delivered it to Russo. Russo paid $3,000 to Pugliese, who gave Barnaba $200 for making the delivery (Tr. 1441-1444).

On one of their numerous meetings at Izzy's Luncheonette Pugliese told Barnaba, as Lessa had earlier, that co-conspirator Vincent Papa supplied Inglese with heroin. Pugliese related that Inglese had asked him to ask Papa for a "package" (a kilogram of heroin) on consignment. Pugliese said that Inglese "was drowning, and 'He wants me to go down with him'" (Tr. 1456). When Barnaba asked how Pugliese could obtain a package from Papa on consignment, Pugliese replied:

> "We're tight, I call him Uncle." Pugliese added: "I pulled a car off a ship one time for him [Papa] with ten packages in it" (Tr. 1456-1457).

On another occasion in October, 1971 Pugliese met Barnaba at the Cottage Inn, a Bronx restaurant, which Pugliese said appellant Joseph DiNapoli owned, and told him of his ties to DiNapoli. Pugliese stated that he and DiNapoli were partners in everything but the restaurant (Tr. 1457-1458).

In October, 1971 on the night before he entered jail Pugliese hosted a farewell party at his Bronx home. At

this party he asked Barnaba's opinion of using appellant John "Sinatra" Gamba as a "stash" man for the narcotics operation. Barnaba replied that Pugliese should decide this for himself (Tr. 1460-61).

After Pugliese went to jail Barnaba continued his contacts with Pannirello and Dilacio. In November, 1971 he paid them most of what he owed for the heroin previously supplied on consignment at Pugliese's direction (Tr. 1452-1453). In November, 1971 Barnaba also accompanied Pannirello to New Jersey, where Pannirello delivered heroin in a Howard Johnson's parking lot to two black men who were driving a car with District of Columbia license plates. Before Pannirello left New York to make this delivery, Pannirello and Dilacio met with Gamba (Tr. 1453-1456).

In December, 1971 Barnaba again sought to obtain narcotics from Dilacio. Dilacio told Barnaba that he had none. Dilacio added that DiNapoli had none either. Dilacio then volunteered that he was going to see DiNapoli's partner Butchie (Tr. 1461). This remark prompted the following conversation:

> Barnaba: (referring to Butch Pugliese) "Butchie, Butchie is away."
> Dilacio: "No, not that Butchie, Butchie Mamone."
> Barnaba: "That's his partner?"
> Dilacio: "Yes" (Tr. 1461-1462).

In November, 1972 Barnaba was arrested on narcotics charges by New York City police officers (Tr. 1482).

3. Frank Stasi

a) Trafficking in narcotics at the Beach Rose Club: Inglese, DelVecchio, Christiano and Ceriale

In 1970 Frank Stasi, whose nicknames were "Boo Boo" and "The Boob", went to work as a steward at Inglese's Beach Rose Social Club (Tr. 273). In the course of his employment there Stasi had almost daily contacts with Inglese and frequent contacts with, among others, DelVecchio, Mamone, and Christiano (Tr. 282-83, 381).

In late 1970 Inglese told Stasi that he was going to obtain "goods" and that if Stasi was interested in helping out, DelVecchio would show him what to do. Stasi said he was interested (Tr. 285-86). Thereafter, Stasi assisted Inglese's subordinates in mixing narcotics for Inglese on at least eight occasions: four times at DelVecchio's home in New Jersey and four times in Stasi's Bronx apartment. After all but the first mixing session, Inglese paid Stasi $2,000 (Tr. 371).

The first of these mixing sessions occurred a few days after Inglese's first discussion of narcotics with Stasi. On Inglese's direction Stasi accompanied DelVecchio from the Beach Rose Social Club to DelVecchio's home in Bloomfield, New Jersey (Tr. 287). There Stasi and DelVecchio mixed three kilograms of heroin with mannite and packaged the product in twelve bags, each containing sixteen ounces or almost a half kilogram (Tr. 289-91). While Stasi waited at a nearby diner, DelVecchio delivered the narcotics to "his man". DelVecchio and Stasi then went to the Blue Lounge, a bar at Westchester and Crosby Avenues in the Bronx, and told Inglese that everything had gone as planned (Tr. 292-4, 912). Inglese paid Stasi $100 for his work (Tr. 294).

Stasi and DelVecchio cut and packaged heroin in New Jersey on three subsequent occasions. Each time they mixed three kilograms of heroin with mannite to obtain twelve half-kilogram packages. Each time DelVecchio disposed of this heroin and Stasi informed Inglese everything had gone as planned. On the second mixing session, Christiano assisted Stasi and DelVecchio (Tr. 295-302, 317, 333-37). Occasionally, Stasi was paid by Inglese after counting money with him, DelVecchio, and, on one occasion, Christiano. The money was counted and separated into stacks of $1,000. The total amount counted each time was between $30,000 and $40,000 (Tr. 372-76).

A couple of months after the last mixing session in New Jersey Inglese told Stasi that they were going to use Stasi's apartment to mix narcotics (Tr. 303). Soon thereafter DelVecchio and Stasi went to New Jersey, where DelVecchio purchased paraphernalia for cutting the narcotics (Tr. 304). The two men then drove to Stasi's apartment at 1113 Vincent Avenue in the Bronx and put the paraphernalia in the kitchen pantry (Tr. 305).

A couple of days later Inglese told Stasi to go to a barbershop on Pleasant Avenue in Manhattan to get mannite (Tr. 305), from appellant Joseph "Joe Red" Ceriale (Tr. 306-307). Stasi went to the barbershop and obtained $2,000 worth of mannite from Ceriale (Tr. 306-08). Inglese directed Stasi to leave the mannite in his apartment which he did (Tr. 309-310). A few days later, on Inglese's instructions, DelVecchio and Stasi mixed this mannite with heroin on the kitchen table in Stasi's apartment and again packaged it in twelve bags of approximately a half kilogram each. DelVecchio took ten packages and delivered them and Stasi kept two in his kitchen pantry (Tr. 312). The following evening Stasi delivered both packages to the club. One bag was picked up by Barnaba

in the kitchen of the Beach Rose, and Inglese delivered the second package to the defendant Joseph Marchese * (Tr. 312-316).

Stasi obtained mannite from Ceriale in the same manner on at least two subsequent occasions and each time paid Ceriale $2,000 (Tr. 321-322, 331-332).

Stasi mixed and packaged heroin with mannite on three subsequent occasions at his apartment. On the first such occasion DelVecchio took ten bags and Stasi again kept two bags, which he later took to the Beach Rose Club, where Inglese delivered one to the defendant Marchese and Stasi himself delivered the other to John Barnaba, who was parked in his car around the corner from the club (Tr. 320-326).

The second time Inglese told Stasi that since DelVecchio was "hot", he was "substituting" the defendant Thomas "Moe" Lentini ** to handle the heroin mixing (Tr. 337). A short time thereafter Lentini and Stasi mixed the heroin at Stasi's apartment with DelVecchio present to instruct Lentini. The last mixing session was handled by Lentini and Stasi,*** after which Stasi reported to DelVecchio at

---

* At the end of the defense case, the Court granted a defense motion for judgment of acquittal with respect to the defendant Marchese.

** Lentini pleaded guilty prior to trial to Count One, the conspiracy count, and Count Twenty-three. Lentini was subsequently sentenced to fifteen years on each count to run concurrently, the entire sentence to run concurrently with the sentence previously imposed on Indictment 73 Cr. 327, and to a special parole term of ten years.

*** On December 13, 1973, after Stasi's arrest, a forensic chemist employed by the Drug Enforcement Administration went to Stasi's apartment (Tr. 1137). He found a trace of heroin between the leaves of the kitchen table and traces of mannitol, the principal ingredient of mannite, under the refrigerator (Tr. 1141-43).

the Lo Piccolo Espresso House and assured him that everything had been done (Tr. 342-43). Each time, DelVecchio picked up the narcotics at Stasi's apartment (Tr. 339, 343).

b) Closing the Beach Rose and relocating to Lo Piccolo

Detectives from the Bronx District Attorney's Office conducted intermittent surveillance of the Beach Rose Social Club from May 15, 1971 until January 15, 1972 (Tr. 910). Inglese was observed there almost every time and on one occasion the surveilling officers followed him to the Blue Lounge at Westchester and Crosby Avenues in the Bronx. Stasi, Christiano, and DelVecchio were also seen often at the club (Tr. 911-13). Numerous photographs were taken on May 17, and 19, 1971 and August 30, 1971 and were introduced as Government Exhibits at trial. They show Inglese, Mamone, Christiano, DelVecchio, Ralph Tutino, Stasi, and Barnaba coming from and going to the Beach Rose Club in various combinations at different times (GX. 23-48; Tr. 910-926).

One day Inglese told Stasi that some of the track-men working at the elevated subway on Wilkinson Avenue over the Beach Rose Club had told him that the club was being observed by someone hidden in the subway station. Inglese said that the Beach Rose had to be closed (Tr. 327).

In fact, Detectives working for the New York City Police Department's Major Investigations Section of the Organized Crime Control Bureau were hidden in a storeroom on the elevated subway station which overlooked the Beach Rose Social Club (Tr. 934-36). They conducted surveillance on several occasions in April 1972 (Tr. 936). On April 28, 1972 the New York City detective conducting this surveillance saw a man in a transit worker's uniform

enter the Beach Rose. Shortly afterwards, several people, including Inglese, apparently located the spot where the detective was secreted, and the surveillance was then discontinued (Tr. 946-48). Prior to its termination, however, color pictures were taken of the persons in front of the Beach Rose Club. These pictures showed Joseph DiNapoli, Inglese, Christiano, Mamone, Lentini, and Stasi in front of the club on April 28, 1972 at various times and in various combinations (GX. 17-19, 49-58; Tr. 936-941, 436-37).

c) The Lo Piccolo Espresso House: Tramunti and Inglese

After discovering the subway station surveillance, Inglese and the others stopped frequenting the Beach Rose Social Club (Tr. 327). Inglese and Stasi then began regular visits to an espresso coffee house called Lo Piccolo, located at Westchester and Roberts Avenues in the Bronx. The Lo Piccolo patrons drank espresso and played Zigamet, an Italian card game, which was run by appellant Carmine Tramunti (Tr. 327, 508). Tramunti was there every day, as were Inglese and Christiano (Tr. 330-31).

One afternoon Stasi saw Inglese and Tramunti talking together at Lo Piccolo (Tr. 382-3). Stasi passed by them on the way to the men's room and overheard Inglese say "I expect some goods; I am going to need some money." Tramunti nodded his head (Tr. 384). When Stasi left the bathroom, Inglese and Tramunti were still talking. Inglese interrupted the conversation and told Stasi he wanted to talk to him. The next day Inglese told Stasi, "I expected some goods and I didn't get it" (Tr. 385).

Shortly thereafter, on February 23, 1973, Stasi, Tramunti, and appellant Joseph DiNapoli's brother, Vincent DiNapoli, went together in Stasi's car to the Tear Drops Bon Soir, a nightclub on Baychester Avenue in the Bronx

(386-388). On arrival the three were seated with others at a large table which had been reserved for Vincent DiNapoli. Stasi sat next to Tramunti and the two talked throughout the evening.* Tramunti said, "Gigi [Inglese], the big guy, I miss him; without him, nothing goes right —the club, there's nothing happening in the Club" (Tr. 389).

The next day Stasi went to see Inglese in the Tombs.** Stasi testified as follows:

> Q. Could you tell us the conversation that you had with Gigi? A. Well, he was asking me, "What's happening outside?"
>
> I say, "It's pretty slow."
>
> And he says, "Have you seen Joe Crow [DelVecchio] or Finnegan [Christiano]?"
>
> I says, "No, I haven't seen them."
>
> He says, "Geez, I wish something happens. This way we could get some money."
>
> I says, "I hope the same thing." And I says to him, "You know, I seen Carmine about the Club and he says about the conversation about the money, yes or no, you would know."
>
> Through that there, he says, "If you don't know what's happening, I don't know. Just say no."
>
> Q. And as a result of that what did you do? A. Well, I went to the Lo Piccolo's the next day and he was standing watching them playing cards.
>
> Q. Who was? A. Carmine Tramunti was watching them playing cards. I said, "I went to see Gigi. He told me 'no' about the conversation".

---

* That evening two New York City detectives and a police officer followed Stasi to the Tear Drops Bon Soir. They saw Stasi speaking with Carmine Tramunti all evening. Tramunti was at a corner table on an elevated platform out of the way of general traffic (Tr. 951-63, 1106-1118, 1191-1194).

** Inglese was serving a sentence for drunken driving (Tr. 3676).

> Q. Did Carmine Tramunti say anything about the conversation? A. He said, "All right, I guess nothing is happening" (Tr. 390-91).

Sometime later, Stasi, Tramunti, and Inglese had a conversation at Lo Piccolo (Tr. 394-95). Inglese told Tramunti, "We're having a problem getting [Thomas] Moe Lentini out of prison."

Tramunti replied, "Well, get him out. What is the bail?"

Inglese said, "It's $75,000".

Tramunti was astonished: "You mean to tell me you can't get up $75,000? Well, try to get him out" (Tr. 395).

Inglese responded, "It's not the $75,000. We need collateral. We need property" (Tr. 396).

Tramunti answered, "There's nothing I can do about that" (396).

Inglese then explained to Tramunti and Stasi, "I'd like to get him out because it's important to the organization because Joe Crow right now can't do anything, and he's very good with figuring and mixing. So we've got to try to get him out". Inglese added that he couldn't use DelVecchio because DelVecchio was "hot" (Tr. 395-96).

At Inglese's direction Stasi then went to the Bronx residence of Lentini's girlfriend (Tr. 397). When Stasi arrived she and Lentini were speaking by telephone. Lentini, who was calling from the Federal House of Detention at West Street, then talked to Stasi asking what could be done to get him out of jail and specifically asking what the "old man" (referring to Tramunti) could do to help

(Tr. 398-399).* Stasi told Lentini that the "old man" had someone with property and he would try to get him out (Tr. 399).**

d) The Pelham Log Cabin and the Centaur: Inglese, Christiano and D'Amico

After Lentini posted bail Stasi saw him at La Piccolo (Tr. 399), Lentini told Stasi that the defendant Jack Spada,*** who was known as "Giocomine", had something for him at the Pelham Log Cabin in the Bronx and that he should meet Spada between 8:00 and 9:00 p.m. (Tr. 400).

Stasi went to the Pelham Log Cabin and met with Spada, Inglese, Christiano, and Jerry Zanfardino.**** When Stasi arrived Inglese said—"Here's a guy sitting on something and you're late" (Tr. 400).

---

* In asking Stasi to come to the Tear Drops Bon Soir, Vincent DiNapoli told Stasi "The old man (referring to Tramunti) is coming, why don't you come? He always gets along with you" (Tr. 387).

** It was stipulated at trial that Thomas Lentini was arrested on federal narcotics charges on April 14, 1973 and that on April 16, 1973, bail was set at $75,000 cash or surety bond. When unable to make bail, Lentini was in custody at the Federal Detention Headquarters at West Street, New York, New York. On May 3, 1973, bail was reduced to $75,000 personal recognizance bond co-signed by Lentini's two brothers, and a family friend and secured by $25,000 cash or surety bond. On May 4, 1973, Lentini made bail and put up a $25,000 surety bond (Tr. 4388).

*** The case against Spada was severed after he was murdered —his hands cut off and his tongue cut out—prior to trial.

**** Gennaro Zanfardino is no stranger to this Court. He was convicted of violating the federal narcotics laws and sentenced on October 13, 1973 to a term of imprisonment of twenty-five years. The Court affirmed his conviction in open court. *United States* v. *Zanfardino*, 492 F.2d 1237 (2d Cir. 1974). See also *United States* v. *Zanfardino*, 493 F.2d 1399 (2d Cir. 1974).

Stasi met Spada in the bathroom. Spada said—"I've got a half a ki for you of cocaine; you know all about it. It's supposed to be for Moe Lentini." Inglese, Stasi, and Spada divided the cocaine among themselves (Tr. 401-402).

Stasi stored this cocaine in the living room closet of an apartment at 1651 Williamsbridge Road in the Bronx. The apartment belonged to his girl friend, the severed defendant, Mary Jane Salvani (Tr. 402). Lentini told Stasi, "Let it stay there a while. We're going to try to get rid of it" (Tr. 402).

Shortly thereafter Stasi went to the Centaur Bar on 46th Street between First and Second Avenues in Manhattan and took a small amount of the cocaine as a sample for appellant Vincent D'Amico (Tr. 403, 410). At the Centaur Stasi met D'Amico, who asked Stasi if there were any "goods" around. Stasi gave him the sample (Tr. 404). D'Amico insisted on calling his partner,* who came to the Centaur and told Stasi he would be in touch with him (Tr. 405).

Subsequently, when Stasi again met D'Amico at the Centaur, D'Amico told him he wanted some heroin (Tr. 406). The next day Stasi met the defendant George Toutouian** at the Barone Bar in East Harlem. Toutouian said that he had heroin if Stasi needed it. The next day Stasi received a quarter kilogram of heroin from Toutouian at the Pelham Log Cabin (Tr. 407-408) and he delivered this heroin to D'Amico at an apartment on West 57th Street in Manhattan.*** After weighing the heroin, D'Amico,

---

* The unindicted co-conspirator Ralph Birdie.

** The defendant Toutouian was murdered prior to trial.

*** The agent operator of the apartment building at 424 West 57th Street testified that apartment 2A had been rented from December 1972 until August 1973, by a Vincent Rizzo and that Rizzo's name appeared on the bell (Tr. 3143-3145). The agent identified Vincent Rizzo in court as the appellant Vincent D'Amico (Tr. 3145).

who was then using the name "Rizzo," contacted his partner, who came to the apartment and approved the transaction. D'Amico then gave Stasi $7,000, which Stasi in turn paid Toutouian withholding $500 as his commission (Tr. 409-10).

On May 22, 1973, Stasi was arrested leaving the apartment at 1651 Williamsbridge Road, where he had stored the cocaine (Tr. 217-226).

e) Stasi's Post-Arrest Activities

After he was arrested, Stasi agreed to cooperate with the Office of Frank J. Rogers, Special State Narcotics Prosecutor, and was immediately released (Tr. 420-22).

On May 30, 1973, Stasi, working as an informant, met with Thomas Lentini on Pleasant Avenue in Manhattan (425-26). Lentini, referring to the cocaine that Stasi had, asked Stasi to provide him with an eighth of a kilogram that night to be delivered to Dominick Lessa. Stasi agreed and, accompanied by some of the police officers who had arrested him, went to the apartment on Williamsbridge Road and removed an eighth of a kilogram from the cocaine that he had received from Spada in the Pelham Log Cabin (Tr. 426-427).

That night Stasi under police surveillance delivered the cocaine to Lentini in the men's room of a bar on Manhattan's Pleasant Avenue. Shortly thereafter, Lentini delivered this cocaine to Lessa (Tr. 428).*

---

* Police officers conducted surveillance of Stasi throughout the evening. They saw him drive up to Pleasant Avenue between 116th and 117th Streets about 8:30, get out of the car and meet Thomas Lentini in front of the Barone Bar (Tr. 1200), and then saw them proceed to the Pleasant Avenue Tavern at 117th Street on Pleasant Avenue (Tr. 1201).

After leaving the tavern, Stasi still under surveillance went to the Centaur and met Vincent D'Amico.* Stasi asked D'Amico about the sample of cocaine that he had given him. D'Amico replied that he had not seen his "man" yet but that, in any event, he was more interested in heroin than cocaine. Stasi told D'Amico that he would let him know if he could get any heroin (Tr. 422-23, 429, 1201-03).

In early June, 1973 Stasi began serving a 35-day sentence on Rikers Island.**

4. Harry Pannirello, Jimmy Provitera, and Thomas Dawson

Harry Pannirello, Jimmy Provitera, and Thomas "Tennessee" Dawson revealed in detail the inner workings of the DiNapoli-Pugliese sphere of the narcotics distribution operation. Pannirello was initially involved in storage and distribution, but when Pugliese went to jail, he, in partnership with Pat DiLacio, took over Pugliese's narcotics business.

a) Distributing Narcotics: The 1380 University Avenue Operation

In April 1970, Pugliese introduced Pannirello to several of his distributors who operated out of two apartments in the building at 1380 University Avenue in the Bronx. Pugliese introduced Pannirello to appellant Hattie Ware, the fugitive defendants, Basil Hansen *** and his wife, Estelle

---

* A plainclothes New York City police officer had preceded Stasi to the Centaur and saw him arrive shortly after 11:00 p.m. and engage in conversation with D'Amico (Tr. 1201-3).

** After his release, Stasi was placed in protective custody. Since October 1973 Stasi has been in federal protective custody and has assumed a new name and a new identity.

*** Basil Hansen has never been apprehended.

"Bunny" Hansen * and the severed defendant Al Greene (Tr. 2124-25).** Pannirello delivered numerous packages of narcotics to Basil Hansen often in Hattie Ware's presence (Tr. 2124-27, 2147-50, 2976), and Pannirello and his partner Dilacio frequently paid Hattie Ware to deliver to Hansen and Al (Tr. 2979, 2194).

On one occasion the appellant William Alonzo, Hattie Ware's brother, who lived with Hattie and who was called "Butch Ware," asked Pannirello if he could obtain a small amount of heroin "to start off small." Pannirello offered Alonzo two ounces of heroin for $2,000 and Alonzo agreed, but paid Pannirello only $1,500 to $1,000 (Tr. 2190-93).

Thereafter, Pannirello's brother-in-law Jimmy Provitera started making the narcotics deliveries at 1380 University Avenue (Tr. 2966-69). On Provitera's first delivery Pannirello introduced him to Hattie Ware and William Alonzo. (Tr. 2971). Eventually, Basil Hansen arrived; Alonzo, Pannirello, Provitera, and Hansen went to Alonzo's bedroom where a package of heroin was handed from Provitera to Pannirello to Hansen (Tr. 2973).

Thereafter, Provitera delivered packages to Hattie Ware for Basil Hansen and directly to Hansen in the street outside the apartment house (Tr. 2976-78).

b) John Gamba and John Springer

In the spring of 1972, Pannirello introduced Provitera to the appellant John Gamba. Provitera began picking up packages from him at his house on Rosedale Avenue in the Bronx (Tr. 2982-84). On his second visit to Gamba's

---

* Estelle Hansen posted $30,000 cash bail and became a fugitive prior to trial.

** The building manager at 1380 University Avenue testified and introduced a lease establishing that defendant Hattie Ware was the lessee of Apartment 11G and Al Greene used Apartment 7D (GX 83; Tr. 3365-3376).

house, Gamba was weighing and packaging heroin with Pannirello (Tr. 2985-86). Provitera picked up packages from Gamba on two subsequent occasions and delivered them to Hansen (Tr. 2987-89).

In June, 1971 Pugliese took Pannirello to the apartment of appellant Springer, whom he called "Hank," to collect money which was owed to Pugliese by Paul "The Arrow" Di Gregorio. Di Gregorio worked with Springer in the narcotics business and was also a courier for Pugliese (Tr. 2133-34, 2136, 2219, 2603-24).

c) Joseph DiNapoli's Narcotics Operations

One afternoon in June 1971, Pugliese suggested that Pannirello drive with him to the home of appellant Joseph DiNapoli's girl friend on Bronxdale Avenue in the Bronx. Pugliese's visit was to bring money to DiNapoli, who he said was his partner in the narcotics business (Tr. 2131). Prior to going into the house, Pugliese put some of the money in his sock, explaining that he was cheating DiNapoli. After Pannirello and Pugliese entered the house, Pugliese laid about $8,000 to $10,000 on a coffee table. DiNapoli began to count the money, but after a few seconds, he pushed it aside.* (Tr. 2132)

On one occasion Pugliese mentioned that DiNapoli was in partnership in the narcotics business with a "Vinnie," who, like Vincent Papa, lived in Queens (Tr. 2217, 1322, 1320, 1311).

---

* Genevieve Patalano, called as a Government witness and granted immunity, testified that she was Joseph DiNapoli's common law wife and that from October 1969 until March 1972 DiNapoli lived with her at 1908 Bronxdale Avenue in the Bronx (Tr. 3254). She looked at a diagram of the interior of 1908 Bronxdale Avenue which Harry Pannirello had drawn (GX 78; Tr. 2219-23) and her testimony demonstrated that the diagram was substantially accurate (Tr. 3257-66). She testified that she had seen both Angelo Mamone and Vincent Papa visit DiNapoli at 1908 Bronxdale Avenue (Tr. 3267-68).

Pugliese went to jail in October, 1971. Before he left, he turned over his narcotics business to Pannirello and Pat Dilacio (Tr. 2139, 2153). Pugliese told Pannirello and Dilacio that he was leaving two kilograms of heroin and some cash with them. The following agreement was reached: Dilacio was to pick up the heroin from DiNapoli, paying him $22,000 per kilogram, and take it to a "stash", where Pannirello could pick it up and deliver it to the customer (Tr. 2154-59). Pannirello and Dilacio were to deliver narcotics on consignment to Barnaba at wholesale prices. Dilacio was to pick up two kilograms immediately from DiNapoli and store the goods in Pugliese's garage.* Pannirello and Dilacio were to pay over some of the profits to Pugliese's wife and to save others until Pugliese was released (Tr. 2165-66).

The next night Pannirello went to the "stash," a garage near Pugliese's house, obtained a half a kilogram of heroin, and delivered it to Thomas "Tennessee" Dawson, one of Pugliese's customers from Washington, D.C., for $16,000 in cash (Tr. 2167). Pannirello then distributed the remaining one and a half kilograms among John Barnaba, Basil Hansen, and Al Greene (Tr. 2151-53, 2170-73, 2193-94).

In late November or December, 1971 Dilacio told Pannirello that he had called DiNapoli to get some heroin and that DiNapoli was going to furnish him a kilogram for $22,000. Dilacio said he would pick up the heroin from DiNapoli and take it to a "stash" at appellant John Gamba's house (Tr. 2175). Pannirello went to Gamba's house, met Dilacio and examined the kilogram of heroin in

---

* Dawson pleaded guilty to Count One of the indictment prior to trial.

** Pannirello identified two photographs of the garage (GX 76 and 77; Tr. 2220). The owner of the garage testified that Frank Pugliese had rented the garage about two and a half years earlier—about July 1971—for seven or eight months (Tr. 2935-37).

Gamba's presence. Gamba was paid $300 a week for storing the heroin (Tr. 2177-78, 2201-02).

From December, 1971 to January, 1972 Dilacio attempted to obtain more narcotics from DiNapoli. On one occasion, Pannirello was in Dilacio's apartment when Dilacio was calling DiNapoli for narcotics. He heard Dilacio talk with "Joe." Afterwards, Dilacio reported that DiNapoli had told him to sit tight and that he would notify him if he had anything. DiNapoli kept putting Dilacio off, and, finally, Pannirello and Dilacio decided to turn to the defendant, Carmine Pugliese,* Frank Pugliese's brother, for narcotics (Tr. 2180-85). Thereafter, they obtained their narcotics from Carmine Pugliese (Tr. 2187).

On February 3, 1972, agents of the Joint Narcotics Task Force were conducting surveillance of the house at 1908 Bronxdale Avenue in the Bronx. At about 8:45 P.M. Vincent Papa drove up with Joseph DiNapoli at his side. DiNapoli got out of the car carrying a large suitcase, which appeared to be empty. Papa and DiNapoli entered the house (Tr. 3605-09). When they left the house at about 9:30 P.M., DiNapoli was carrying the suitcase with two hands as if it were very heavy (Tr. 3605-3616). Both men got back in the car and DiNapoli placed the suitcase in the back seat (Tr. 3611-13). After Papa and DiNapoli had driven about seven blocks, they were arrested. The arresting officers opened the suitcase (GX 98) and found that it contained $967,450, principally in hundred and fifty dollar bills (Tr. 3653-57). Inside 1908 Bronxdale Avenue that evening was Tramunti's friend, Vincent DiNapoli, Joseph DiNapoli's brother (Tr. 4140).

In early February, 1972 Thomas "Tennessee" Dawson met Pannirello at a Howard Johnson's on Route 46 in New Jersey to receive payment for and to deliver narcotics. Pannirello told Dawson that he did not have narcotics

---

* Carmine Pugliese has never been apprehended.

because his source had been arrested with a million dollars, a small amount of which, he said, was his (Tr. 2657-58). By March, however, Pannirello told Dawson he could supply whatever narcotics he needed. Dawson and the appellant Warren Robinson received from two to two and a half kilograms of heroin at $37,000 per kilogram (Tr. 2659-2660).

d) Pannirello Deals With Frank Russo

Later in the spring of 1972 Pannirello met the appellant Frank Russo, who purchased one-half kilogram of heroin, which he later returned after his customer refused to pay for it (Tr. 2202-5).

e) The Washington, D.C. Distribution Apparatus

Starting in February, 1971 Thomas "Tennessee" Dawson purchased half kilogram quantities of heroin every week to ten days from Pugliese directly and from Pugliese's courier, Paul "The Arrow" DiGregorio. Dawson took this heroin to Washington where Warren Robinson cut the narcotics and distributed them to retailers in the Washington, D. C. area (Tr. 2603-43).

In August, 1971 Pugliese drove Pannirello to a street near Co-Op City in the Bronx and introduced him to Dawson. Pugliese, who used the name "Georgie" when dealing with Dawson, explained that Pannirello would take over his narcotics business when Pugliese went to jail. Pannirello and Pugliese sold Dawson a half kilogram of heroin for $16,000 in cash (Tr. 2143-44, 2152, 2645-46).

Thereafter, Dawson regularly purchased large quantities of heroin from Pannirello, which appellant Warren Robinson distributed in Washington, D.C. Dawson took delivery from Pannirello and Provitera in the parking lot of a Howard Johnson's in Route 46 in New Jersey (Tr. 2178-80, 2646-51).

In the spring of 1972 Dawson introduced Pannirello to the appellant Warren Robinson (who used the name "Alan") at the Howard Johnson's (Tr. 2189, 2646-50). At this meeting Pannirello sold a kilogram of heroin to Robinson for $37,000 (Tr. 2189-90, 2652-53). Eventually, Dawson stopped going to New Jersey to pick up heroin from Pannirello and Robinson went in his place (Tr. 2653-55).

In late May, 1972 Pannirello sold two or three more kilograms of heroin to Warren Robinson (Tr. 2198, 2201, 2659-60). Thereafter, Provitera made numerous deliveries of quarter kilograms of heroin to Robinson at the Howard Johnson's on Route 46 in New Jersey at a price of $37,000 per kilogram (Tr. 2194-98, 2201-2202, 3017-19).

After a slow summer, heroin deliveries were resumed in the fall of 1972 to Robinson at the Howard Johnson's. In October, 1972, Provitera delivered heroin to Robinson, who introduced Provitera to appellant Henry Salley. Robinson said that Salley was "his man" and that Provitera should deliver to Salley thereafter (Tr. 3025-26). Two weeks later, Provitera, on Pannirello's instructions, delivered heroin to Salley at the same Howard Johnson's and told Salley that Pannirello would be in touch with Robinson (Tr. 3027). In November Pannirello and Provitera drove again to the Howard Johnson's to meet Robinson. While they were waiting, Salley appeared and told them that Robinson had sent him and that Robinson was on his way from Washington, D.C. and would arrive shortly (Tr. 2208-09, 3028).

When Robinson arrived, Pannirello and Provitera went with him to Salley's motel room where Robinson, in Salley's presence, complained that previously furnished "dope" was of bad quality. The four then arranged for delivery of one kilogram of heroin and Robinson paid Pannirello $19,000 (Tr. 2209-11, 3029-30, 3034).

In February, 1973 Pannirello and Provitera were arrested after making three heroin sales to an undercover agent of the Drug Enforcement Administration (Tr. 2215-17, 3033).*

Other Evidence

a. Primrose Cadman

Primrose Cadman, a British heroin addict, told about the early days of Inglese's narcotics operation. Starting in June 1969, she obtained heroin on approximately ten occasions from Inglese and DelVecchio inside Diane's Bar, 2034 Second Avenue in Manhattan, in exchange for expensive ladies clothes, which she stole from Lord and Taylor and Saks Fifth Avenue to Inglese's specifications (Tr. 108-174).

b. Frank Russo sells narcotics to an undercover agent

On the night of January 5, 1973 the defendant Frank Russo met with John Barnaba and an undercover agent of the New York City Police Department (Tr. 3510-13). During this meeting Russo gave the undercover agent a sample of heroin (GX 89B, Tr. 3516-18).

After an unsuccessful attempt to buy a half of a kilogram on January 9, 1973, the undercover agent, again accompanied by Barnaba, on January 10, 1974 bought approximately half a kilogram of heroin (GX 91B) from Russo for $19,500 (Tr. 3531-43).** On January 16, 1973

---

* Both ultimately agreed to cooperate with the Federal Government. Pannirello is living under a new name and identity supplied by the Government.

** It was circumstantially established that the narcotics Russo sold to the undercover agent came from Pannirello. Harry Pannirello testified that Frank Russo was to receive a quarter kilo-

[Footnote continued on following page]

Russo again delivered heroin (GX 92C)* to the undercover agent to make up for deficiencies in the previous delivery (Tr. 3544-47).

c. Seizure of narcotics and paraphenila from the apartment of appellant John Springer

On December 3, 1973, officers of New York City's Organized Crime Control Bureau went to the apartment of appellant John Springer to execute a bench warrant for his arrest based on his failure to appear on the indictment in this case. In the apartment, they found, in addition to Springer, his wife and children, heroin and cocaine which Springer was in the process of cutting and repackaging (Tr. 3463-74, 3569-77).**

The Defense Case

1. Louis Inglese

The bartender at Diane's Bar testified that a woman, presumably Primrose Cadman, came regularly to the bar selling stolen ladies clothes to Inglese but that Inglese

---

gram of heroin (Tr. 2214-15). The night of the delivery, federal agents conducting surveillance of Jimmy Provitera saw Russo's car in the area where Provitera picked up narcotics from Dilacio (Tr. 3452-53, 3033).

* It was stipulated that the packages bought from Russo (GX 89B, 91B and 92C) contained heroin in the following amounts:

Exhibit	*Quantity*	*Quality*
89B	2 grams	12.4% heroin (Tr. 3523)
91B	16¾ ozs, 85 grains	9.3% heroin (Tr. 3541)
92C	1 oz, 10 grains	10.6% heroin (Tr. 3549-50)

** As a result of their activities on the night of December 3, 1973, Springer and his wife were charged with possession of narcotics and with attempting to pay a one thousand dollar bribe to the arresting officers.

had paid for the clothes with cash, not narcotics as Primrose Cadman had testified. He further testified that he had never seen Joseph DelVecchio give Cadman narcotics in the kitchen as she had testified (Tr. 4318-30).

2. Donato Christiano

Christiano introduced the Nagra recording device worn by Barnaba at the time of a tape-recorded conversation he had with Christiano (Christiano Exhibit A). This taped conversation had been introduced by the Government during Barnaba's testimony (Tr. 185a, 52; GX 65). Christiano also offered a stipulation as to certain obscene remarks made by police officers to Stasi during his debriefing.

3. Joseph DiNapoli

Joseph DiBenedetto testified that he and Joseph DiNapoli engaged in a loansharking operation. He further testified that he and DiNapoli were indicted for loansharking, pleaded guilty and were sentenced to two and three years respectively (Tr. 4118-45; 4125).

DiNapoli also called witnesses and introduced photographs (DiNapoli's Exhibits D through H, and O) attempting to show that Pannirello's description of the living room in the house at 1908 Bronxdale Avenue was incorrect (Tr. 3997-4122).

4. Angelo Mamone

Mamone introduced Santini Brothers moving company records (Mamone's Exhibit A) that in February, 1973 he moved a substantial amount of expensive furniture from the Bronx to Ft. Lauderdale, Florida.

5. Frank Pugliese

Pugliese called two of the prosecutors, United States Attorney Paul J. Curran and Assistant United States At-

torney Walter M. Phillips, Jr., in an attempt to establish a discrepancy between the Supplemental Bill of Particulars and the testimony of Thomas Dawson (Tr. 3750-85).

6. Joseph Ceriale

Ceriale tried to established an alibi defense that he was regularly employed at the time he delivered mannite to Stasi at the barbershop on Pleasant Avenue. Both employers' testimony demonstrated, however, that he had ready access to the Pleasant Avenue barbershop throughout his employment. Ceriale also attempted to establish that, contrary to Stasi's testimony, he did not have red hair (Tr. 4146-91).

7. Hattie Ware

In an attempt to explain away two photographs in evidence (GX 69, 70) showing Hattie Ware dining and drinking with Frank Pugliese and Basil and Estelle Hansen at the Copacabana, Hattie Ware called as a witness her girl friend, who testified that she and Hattie Ware had gone to the Copacabana one year to celebrate her birthday and that they had met the others there (Tr. 4299-4306). Hattie Ware also called character witnesses (Tr. 4276-4306).

8. Henry Salley

Henry Salley testified that he had never been arrested, had never been involved with narcotics and though he had come to New York with Warren Robinson on two occasions, they had never stopped at a Howard Johnson's in New Jersey. He also introduced his honorable discharge papers from the Army (Salley's Exhibit A) and certain papers relative to the death of his father (Salley's Exhibits B, C) (4194-4202). On cross-examination, he admitted that in August, 1973 he had been convicted for the illegal possession of the controlled substance Preludin. After being shown a registration card from the Howard Johnson's on Route

46 in New Jersey bearing his signature and address, he suddenly recalled that in October 1972 he and a girl had taken a trip just to get away and had stayed in a Howard Johnson's though Salley did not recall where it was (GX 107, Tr. 4232-34, 4262-4267).

The Government's Rebuttal Case

In rebuttal, the Government put into evidence Henry Salley's registration card from the Howard Johnson's (GX 107-108; Tr. 4389-93).

ARGUMENT

POINT I

The Jury Properly Found a Single Conspiracy Among the Defendants and Their Co-conspirators to Traffic in Narcotics.

Four appellants, Inglese, Christiano, Ceriale, and D'Amico seek reversal of their convictions on the ground that the evidence showed multiple conspiracies rather than the single conspiracy charged in the indictment, or on the ground that the District Court's charge concerning multiple conspiracies was erroneous. Appellants Tramunti and Mamone argue that they should have been granted severances.

A. Single Conspiracy

The evidence established the existence of a single conspiracy which contemplated the repeated diluting, repackaging, and redistribution of narcotics over the four-year period charged in the indictment. The evidence established that there was a "vertically integrated loose-knit combination" which included a common source and importer, mutual dependence, and common middle level wholesalers and distributors, in which all of the defendants had clearly defined, specific roles.

Louis Inglese and Joseph DiNapoli presided over the day-to-day operations of the conspiracy, each supervising groups of people who distributed, mixed, transported, and sold narcotics. However, these operations were linked together in many ways. Joseph DiNapoli's group and Inglese's group were both supplied by Vincent Papa. Joseph DiNapoli was observed at the Beach Rose Social Club, Inglese's headquarters, and Frank Pugliese and Angelo Mamone, Joseph DiNapoli's partners, were intimately involved in Inglese's operation. The extent of their participation in the affairs of Inglese's group was demonstrated by such occurrences as Mamone's vouching for Forbrick in connection with Inglese's refusal to meet with Forbrick to discuss narcotics. Similarly, Mamone resolved a dispute that Barnaba, then a customer of Inglese's, was having over some heroin which Inglese had furnished to Barnaba. Finally, on an occasion in November, 1970, at the Beach Rose Club Inglese called Mamone to count money that Barnaba had received as advance payment from Forbrick for narcotics. Moreover, it was not only Mamone who worked with Inglese's group. Pugliese, another of Joseph DiNapoli's partners, told Barnaba that Inglese, who he said was "drowning", had asked him to obtain for him from Papa a kilogram of heroin on consignment. On another occasion, while Pugliese and Barnaba were driving in a car, Pugliese pointed out in the street a man whom he identified as one of Inglese's customers. Barnaba said he had previously seen the man deliver boxes to Inglese at the Beach Rose Social Club. Pugliese replied: "Them boxes were full of money" (Tr. 1459).

Moreover, the connection between the Joseph DiNapoli and Inglese groups was not limited to a common source of supply of narcotics. The evidence established that Carmine Tramunti was a financier of, and a prime mover in, Inglese's operation, once it moved from the Beach Rose Social Club to the Lo Piccolo Espresso House. One

of Tramunti's close associates was Vincent DiNapoli, brother of Joseph DiNapoli. And though there was no direct evidence connecting Tramunti's financing efforts to Joseph DiNapoli's group, it is doubtful that the jury missed the significance of the fact that the night that DiNapoli and Vincent Papa were arrested leaving the house at 1908 Bronxdale Avenue with almost $1 million in cash in a suitcase, Carmine Tramunti's close associate Vincent DiNapoli was inside the house.

The evidence thus established a core group of conspirators—Papa, Tramunti, Inglese, Mamone, Pugliese, and Joseph DiNapoli. However, the inter-relationship between the Inglese and Joseph DiNapoli operations was not limited merely to the interaction of the core group. For example, Paulie "The Arrow" Di Gregorio was a courier for Joseph DiNapoli's partner Pugliese and a partner of Pugliese's customer Springer, was also supplied by Forbrick, who obtained his narcotics from Inglese through Barnaba. Barnaba, supplied by Inglese, and Mamone, Joseph DiNapoli's partner, both sold to Burke. Barnaba was supplied by Inglese and later, through Pugliese and Pannirello, the Joseph DiNapoli group. Lessa, who was supplied directly by Papa, also bought narcotics from the Inglese group through Stasi.

That this evidence plainly established the existence of a single narcotics conspiracy is demonstrated by this Court's recent opinion in *United States* v. *Mallah,* Dkt. No. 74-1327 (2d Cir., September 23, 1974), Slip op. at 5479, 5495, 5497:

> "But while the evidence did indicate that the co-conspirators often moved in two groups, there was sufficient indicia of criminal partnership—including common direction from the core conspirators, co-mingling of assets, mutual dependence, and common business offices—to link the two groups together. As in a firm with a real estate department an an in-

surance department, the fact that partners bring in two kinds of business on the basis of their different skills and connections does not affect the fact that they are partners in a more general business venture. Each of the defendants must have been aware that he was participating in a scheme in which there were many suppliers and purchasers of both heroin and cocaine. The jury was entitled to find that the defendants belonged to the same firm. *United States* v. *Bynum*, 485 F.2d 490, 495 (2d Cir. 1973), *vacated and remanded on other grounds*, —— U.S. —— 42 U.S.L.W. 3646 (May 28, 1974); *United States* v. *Arroyo*, [494 F.2d 1316 (2d Cir. 1974)].

* * * * *

One who deals in large amounts of narcotics is held to the knowledge that there is a large criminal organization which is making that deal possible, and one is liable as a co-conspirator even though one has no personal knowledge of the identity of many of the co-conspirators. *United States* v. *Bynum*, 485 F.2d 490, 495 (2d Cir. 1973), ***vacated and remanded on other grounds*, —— U.S. ——, 42 U.S.L.W. 3646** (May 28, 1974); *United States* v. *Arroyo*, [494 F.2d 1316 (2d Cir. 1974)]; *United States* v. *Sisca*, —— F.2d ——, slip. op. 3413, 3427-28 (2d Cir. May 10, 1974); *United States* v. *Cirillo*, —— F.2d ——, slip opinion 3297, 3323-26 (May 7, 1974). While defense counsel have argued that these cases represent a departure from the rule of *Kotteakos* v. *United States*, 328 U.S. 750 (1946), to the effect that a defendant has a right not to be tried *en masse* for a conglomeration of distinct offenses committed by others, the *Bynum-Arroyo* line of authority only reflects judicial awareness of the fact that the narcotics business generally takes the shape of a joint criminal venture among many criminals.

* * * * *

> Neither has the classical distinction between simple chain and hub-spoke conspiracies held up well in the area of narcotics conspiracy, for where two or more chains are connected to a hub by core conspirators this court has not hesitated to view the entirety as a single conspiracy. *Bynum; Arroyo; Sisca.*"

Against this factual and legal background, it is hardly open to Inglese, Christiano, Ceriale, and D'Amico to argue that they were not members of a single conspiracy. Inglese, as shown, was one of the core conspirators. Christiano was one of Inglese's henchmen. Ceriale furnished Inglese's organization with mannite to cut their heroin. D'Amico received a sample of cocaine from Stasi which the latter had received as part of a larger quantity directly from Inglese (Tr. 400-405). D'Amico subsequently bought a quarter kilogram of heroin from Stasi,* and, later, met with Stasi again to discuss heroin and cocaine purchases** (Tr. 422-423, 429). Inglese, Christiano, Ceriale and D'Amico thus could not but have been aware that each was participating in a ". . . large on-going plan or conspiracy." *United States* v. *Arroyo, supra*, 494 F.2d at 1319. See also *United States* v. *Mallah*, supra; *United States* v. *Bynum, supra; United States* v. *Sisca*, Dkt. No. 73-2017 (2d Cir., May 10, 1974); *United States* v. *Cirillo*, 468 F.2d 1233 (2d Cir. 1972), *cert. denied*, 410 U.S. 989 (1973).

B. The Charge

The charge on multiple conspiracies was clear and proper. The charge on multiple conspiracies (Tr. 5194-5, 5196) was identical to the charge approved by this Court in

---

* While Stasi did not receive this heroin from Inglese, that is of no moment. Cf. *United States* v. *Salazar, supra*, 485 F.2d 1272, 1276-77 (2d Cir. 1973).

** By this time Stasi had been arrested and was working for the Special State Narcotics Prosecutor.

United States v. *Bynum*, 485 F.2d 490, 497 (1973) except that the District Court carefully avoided that portion of the charge challenged in *Bynum* by stating:

> "Proof of several separate conspiracies is not proof of the single, overall conspiracy charged in the indictment unless one of the several conspiracies which is proved is the single conspiracy which the indictment charges. What you must do is determine whether the conspiracy charged in the indictment existed between two or more conspirators. If you find that no such conspiracy existed, then you must acquit. However, if you are satisfied that such a conspiracy existed, you must determine who were the members of that conspiracy.
>
> "If you find that a particular defendant is a member of another conspiracy, not the one charged in the indictment, then you must acquit that defendant. In other words, to find a defendant guilty you must find that he was a member of the conspiracy charged in the indictment and not some other conspiracy" (Tr. 5194-5).

The Court carefully and repeatedly instructed the jury that if they did find the single conspiracy charged in the indictment they were required to determine membership on an individual basis:

> "In determining whether any defendant was a party, each is entitled to individual consideration of the proof respecting him or her, including any evidence of his or her knowledge or lack of knowledge, his or her status, his or her participation in key conversations, his or her participation in the plan, scheme or arrangements alleged" (Tr. 5196; 5322, 5352).

In addition, the Court painstakingly marshalled the evidence with respect to each defendant (Tr. 5291-5319).

C. Severance

In view of the evidence establishing the existence of a single conspiracy, the refusal of the trial court to grant severances to the complaining defendants was proper. *United States* v. *Bynum, supra,* 485 F.2d at 497.

"Trial judges possess broad discretion in granting motions to sever pursuant to Fed. R. Crim. P. 14" *United States* v. *Cassino,* 467 F.2d 610, 622 (2d Cir. 1972), *cert. denied,* 410 U.S. 928 (1973). The established rule in this Circuit is that a defendant

> "'must demonstrate substantial prejudice from a joint trial, not just a better chance of acquittal at a separate one, and that a trial court's refusal to grant a severance will rarely be disturbed on review.'" *United States* v. *Fantuzzi,* 463 F.2d 683, 687 (2d Cir. 1972), quoting *United States* v. *Borelli,* 435 F.2d 500, 502 (2d Cir. 1970), *cert. denied,* 401 U.S. 946 (1971).

None of the examples of alleged prejudice * cited by

---

* These include (1) length of the trial, the volume of evidence, and the number of defendants (see *United States* v. *Stromberg,* 268 F.2d 256 (2d Cir.), *cert. denied,* 361 U.S. 863 (1959); *United States* v. *Aviles,* 274 F.2d 179 (2d Cir.), *cert. denied,* 362 U.S. 974 (1960)); (2) limited involvement in the conspiracy (see *United States* v. *Vega,* 458 F.2d 1234, 1236 (2d Cir. 1972), *cert. denied,* 410 U.S. 982 (1973); *United States* v. *Bynum, supra,* 485 F.2d at 497); (3) proof of the other crimes during the course of the conspiracy (*United States* v. *Bynum, Id.*); (4) conflicting or antagonistic defenses among the defendants (*United States* v. *Jenkins,* 496 F.2d 57 (2d Cir. 1974); *United States* v. *Hurt,* 476 F.2d 1164 (D.C. Cir. 1973)).

Tramunti's contention (Br. at 51-52) that he was prevented from developing "exculpatory" material is frivolous. Tramunti's lawyer wished to question an undercover agent about a statement made to him on January 15, 1973 by a "Fat Carmine" outside the presence of any of the defendants or co-conspirators. "Fat Carmine" had told the agent that two weeks earlier he had spoken to

[Footnote continued on following page]

Mamone and Tramunti demonstrate that the trial court abused its discretion in denying their requests for separate trials.

POINT II

The Evidence Was More Than Sufficient.

Tramunti, DiNapoli, Mamone, and Gamba claim that the evidence was not sufficient to convict them.* Alonzo and Salley argue that the evidence against them showed only an isolated act insufficient to show their involvement in the conspiracy. The record belies these contentions.

A. Carmine Tramunti

The proof showed Tramunti's personal and direct involvement with Inglese in furtherance of the conspiracy on three separate occasions.

Inglese, who said he "was not going to touch any heroin for some time and that Carmine should look for another connection." (See Appellants' Supplemental Appendix at 101Sa-102Sa.) Tramunti argues that this statement showed that in January, 1973, when Inglese asked Tramunti for financing, Inglese was not buying narcotics. Because there was no evidence linking "Fat Carmine" to the conspiracy, the Court on the objection of Inglese (Tr. 3504-06) properly held this statement to be inadmissible hearsay. The Court required the Government to give Tramunti the name and, if it had it, the address of "Fat Carmine" (Carmine Miranda) so that Tramunti could develop any exculpatory evidence had there been any (Tr. 3561-63). The Government did so, but Tramunti did not subpoena "Fat Carmine." Thus, the joinder was not responsible for his failure to elicit the testimony of "Fat Carmine".

* Appellant D'Amico raises a "sufficiency" argument that the indictment charged a purchase of heroin in November, 1972 and the proof showed this transaction occurring a month or two later. D'Amico points to no prejudice by virtue of this variance and there was none. Thus, his contention has no merit.

Tramunti's role as financier of Inglese's narcotics opertions first came to light at the Lo Piccolo coffee house, when Stasi saw and overheard one of Tramunti's and Inglese's frequent guarded private conferences. Inglese, whose trafficking in heroin was independently established, told Tramunti: "I expect some goods. I am going to need some money" (Tr. 384). Tramunti responded by nodding his head (Tr. 384). *United States* v. *Ruiz*, 477 F.2d 918, 919 (2d Cir.), *cert. denied*, 414 U.S. 1004 (1973). The next day Inglese told Stasi, "I expected some goods and I didn't get it". *United States* v. *Sisca, supra*, slip op. at 3426-3427.

Any possible doubt that Tramunti's nod was one of assent to provide narcotics financing was removed a couple of months later when, at the urging of Vincent DiNapoli, Stasi accompanied Vincent DiNapoli and the "old man" (Tramunti) to the Tear Drops Bon Soir night club (Tr. 386-388). This time Tramunti pointedly complained to Stasi about Inglese's absence from Lo Piccolo and the resultant lack of action there. Tramunti's words left little to the imagination: "Gigi [Inglese], the big guy, I miss him; without him, nothing goes right—the club, there's nothing happening in the club" (Tr. 389). Tramunti's concern prompted Stasi to assure Tramunti that he would visit Inglese in jail the next day, which Stasi did (Tr. 390). At their meeting, having first learned from Stasi that Stasi had not seen Inglese's other narcotics lieutenants DelVecchio or Christiano, Inglese, in an obvious reference to his narcotics trade, said, "Geez, I wish something happens. This way we could get some money" (Tr. 390). Stasi then related his previous night's conversation with Tramunti. "You know, I seen Carmine about the club and he says about the conversation about the money, yes or no, you would know" (Tr. 390). Inglese replied to Stasi, "If you don't know what's happening, I don't know. Just say no" (Tr. 391). The next day Stasi carried Inglese's clear message back to Tramunti at Lo Piccolo telling Tramunti, "I went to see Gigi. He told me no

about the conversation" (Tr. 391). Tramunti's response was, "All right. I guess nothing is happening" (Tr. 391).

This second sequence of Tramunti-Stasi, Inglese-Stasi, Stasi-Tramunti meetings and conversations viewed, as it must be, in the context of the prior Inglese-Tramunti conversation in Lo Piccolo, and Inglese's repeated dealings in large quantities of heroin, is clear and compelling evidence that Tramunti financed Inglese's narcotics operation with full knowledge that narcotics were involved. A fair construction of these events permits, indeed practically compels, the finding that Tramunti was awaiting the word from Inglese that narcotics were available and that Inglese's need for the money to pay for the goods—which need he had earlier mentioned to Tramunti at Lo Piccolo—was again present. *United States* v. *Manfredi*, 488 F.2d 588, 596 (2d Cir. 1973), *cert. denied*, — U.S. —, 42 U.S.L.W. 3667 (June 3, 1974); *United States* v. *Marrapese*, 486 F.2d 918 (2d Cir. 1973), *cert. denied*, — U.S. —, 42 U.S.L.W. 3536 (March 25, 1974).

Additional direct evidence of Tramunti's involvement was before the jury. Shortly after Inglese's release from the Tombs Inglese told Tramunti that he was having trouble posting $75,000 bail for Moe Lentini. Tramunti expressed astonishment that Inglese could not raise $75,000 and urged Inglese, "Try to get him out" (Tr. 395). After Inglese replied that property not just cash was needed, Tramunti said that he could not help with property. Inglese then explained to Tramunti Lentini's importance to the narcotics operations, "I'd like to get him out because *it's important to the organization* because Joe Crow [DelVecchio] right now can't do anything and he's [Lentini] very good with *figuring and mixing*. So *we've* got to try to get him out" (emphasis supplied) (Tr. 395-95-a). This Inglese-Tramunti conversation is further proof of Tramunti's partnership in Inglese's narcotics distribution operation. The references to Lentini's importance to "the organization" and to his abilities at "figuring and mixing"

can only be directed toward the narcotics trade in which Tramunti and Inglese were joined together. Inglese's final comment, "We've got to get him out," was made to Tramunti and use of the pronoun "we" could only describe their mutual involvement in narcotics and their mutual need for Lentini's release on bail. See *United States* v. *Santana*, Dkt. No. 74-1080 (2d Cir., August 19, 1974), slip op. at 5310-5311.

It is also significant that when Stasi subsequently spoke by telephone with Lentini, who was calling from the Federal Detention Headquarters, he learned that Lentini was also looking to the "Old Man"—Tramunti—to get him out of jail (Tr. 398-99). Stasi assured Lentini that the "Old Man" had someone with property and that Tramunti would try to get him out (Tr. 399). Lentini posted the bail and necessary security shortly thereafter.

B. Joseph DiNapoli

There was both sufficient independent evidence of DiNapoli's participation in the conspiracy to warrant the admission of hearsay declarations of co-conspirators against him and sufficient evidence for the jury to convict him on both the conspiracy and substantive counts.

In order for the hearsay declarations of co-conspirators to be admitted against a defendant there must be non-hearsay evidence showing "a likelihood of an illicit association between the declarant and the defendant . . ." *United States* v. *Rayland*, 375 F.2d 471, 477 (2d Cir. 1967), *cert. denied*, 390 U.S. 925 (1968). Such association must be shown "by a fair preponderance of the evidence independent of the hearsay utterances." *United States* v. *Geaney*, 417 F.2d 1116, 1120 (2d Cir. 1969), *cert. denied*, 397 U.S. 1028 (1970).*

---

* In fact, the Government was held to proof beyond a reasonable doubt. The Court charged (contrary to the teachings of

[Footnote continued on following page]

The independent evidence of DiNapoli's involvement was direct and substantial. In June, 1971 Pannirello accompanied his partner in the narcotics trade, Pugliese, to DiNapoli's residence at 1908 Bronxdale Avenue. Before entering DiNapoli's house, Pugliese secreted cash in his sock stating "I'm not going to give him all the money" (Tr. 2131-2133). Pugliese then delivered between eight and ten thousand dollars to DiNapoli inside the house, which DiNapoli accepted without counting (Tr. 2132). DiNapoli's receipt from Pugliese, who was accompanied by his partner, Pannirello, of such a large amount of cash at a time when Pugliese was deeply involved in selling large quantities of heroin was, by itself, substantial evidence to link DiNapoli to this conspiracy. *United States* v. *Mallah*, *supra*, slip op. at 5478.

The independent evidence against DiNapoli only begins with his receipt of this cash. There was also evidence that DiNapoli visited Inglese's Beach Rose Club during this same time period. In fact, the jury saw a photograph of DiNapoli standing in front of that club with Tutino (GX 56; Tr. 940). In addition, the proof showed that DiNapoli had frequent contacts with Pugliese and Mamone at his Bronxdale Avenue home. The participation of Tutino, Pugliese and Mamone in large narcotics transactions in the course of the conspiracy was established by ample direct proof. *United States* v. *Manfredi*, *supra*.

United States v. *Ragland*, 375 F.2d 471 (2d Cir. 1967), *cert. denied*, 390 U.S. 925 (1968); *United States* v. *Nuccio*, 373 F.2d 168 (2d Cir. 1967), *cert. denied*, 387 U.S. 906 (1967)) as follows:

> "[A defendant's] participation in the conspiracy, if you find one did exist, must be established by the independent evidence of each defendant's own acts, statements and conduct.
>
> So you understand? That defendant's acts, statements and conduct, and nothing else, to see if he was a member of the conspiracy" (Tr. 5352).

The final and most compelling item of non-hearsay evidence tying DiNapoli to this conspiracy was his actual possession on the night of February 3, 1972 of $967,450 in fifty and one hundred dollar bills in a suitcase which DiNapoli, accompanied by co-conspirator Vincent Papa, had removed from DiNapoli's Bronxdale Avenue residence.

The totality of this independent evidence, consisting of receiving the proceeds of narcotics sales, meeting with central figures in the conspiracy both at the Beach Rose Club and at his Bronxdale Avenue residence, and subsequently removing almost $1 million in cash from that same address in the middle of the night is plainly sufficient to meet the standards set forth in *Ragland* and *Geaney, supra*. Compare *United States* v. *D'Amato*, 493 F.2d 359, 362-365 (2d Cir. 1974); *United States* v. *Manfredi, supra*; *United States* v. *Pui Kan Lam*, 483 F.2d 1202, 1208 (2d Cir. 1973); *United States* v. *Ruiz, supra*. See also *United States* v. *Wisniewski*, 478 F.2d 274, 279-280 (2d Cir. 1973). *United States* v. *Calabro*, 449 F.2d 885, 889-890 (2d Cir. 1971), *cert. denied*, 404 U.S. 1047 (1972); *United States* v. *Calarco*, 424 F.2d 657, 660 (2d Cir.), *cert. denied*, 400 U.S. 824 (1970); *United States* v. *Vasquez*, 429 F.2d 615 (2d Cir. 1970).

Even DiNapoli concedes that once the statements made by co-conspirators in furtherance of the conspiracy are admitted, the evidence of his participation in the conspiracy is more than sufficient. He argues, however, that there was insufficient evidence to support Count Twenty-One, which charges that he and Dilacio distributed heroin on or about December, 1971. This argument is frivolous.

In a conversation with Pannirello and Dilacio in October 1971, Pugliese said that "Dilacio was going to pick up [the narcotics] from Joseph DiNapoli and [Pannirello] was to make the deliveries" (Tr. 2158). In late November or early December 1971, Dilacio told Pannirello that he

had called DiNapoli and that DiNapoli "was going to give a kilo" for $22,000. Dilacio also told Pannirello that he was going to pick up the kilogram and take it to Gamba, the stash (Tr. 2175). Pannirello later went to Gamba's, picked up two packages which Gamba said was a kilo, and sold it (Tr. 2177-2178). It is elementary that " 'the existence of a design or plan to do a specific act is relevant to show that the act was probably done as planned;' " and the fact that the heroin was delivered to Gamba as planned without further comment from Dilacio established that the plan was carried out as intended. *United States v. Annunziato*, 293 F.2d 373, 377 (2d Cir.), *cert. denied*, 368 U.S. 919 (1961).

C. Angelo Mamone

Mamone's assertion that there was insufficient evidence to submit the case against him to the jury is frivolous. There was abundant evidence of Mamone's membership in the conspiracy. He was in frequent attendance at the Beach Rose Club where he huddled privately with Inglese (Tr. 282-83). He helped Inglese count $5,500 received from Barnaba for one-quarter kilogram of heroin (Tr. 1360, 1645-49). He persuaded Inglese to speak directly to Forbrick instead of through Barnaba about Inglese's delay in delivering narcotics (Tr. 1368-69). He also resolved a dispute that Burke had with Barnaba over $3,000 which Mamone knew involved a narcotics transaction. Mamone, claiming that his "customer" Burke owed him twenty-five to thirty thousand dollars, settled the problem by informing Barnaba that he had reduced Burke's debt by $3,000 and that Barnaba now owed him (Mamone) that sum (Tr. 1427-28, 1665-71). Mamone also met frequently with DiNapoli at DiNapoli's Bronxdale Avenue residence (Tr. 3267-68).

Mamone's involvement having been plainly established by the foregoing direct evidence, the statement by Dilacio that, since he was unable to get narcotics from DiNapoli, he would go to DiNapoli's partner, "Butch" (Tr. 1461-62),

Mamone was admissible against Mamone as a statement of a co-conspirator clearly made in furtherance of the conspiracy.

D. John Gamba

The argument that John Gamba had insufficient knowledge of the scope of the conspiracy and that, therefore, the evidence was insufficient as to him is without merit.

At Pugliese's direction Gamba regularly stored and concealed or "stashed" heroin over a period of six months for Pannirello and Dilacio and, further, assisted in the cutting and redistribution of the narcotics (Tr. 2985-86, 2175, 2982-87).

In the unique position of a "stash", Gamba's knowledge encompassed three levels of distribution. Though he may not have known their names, he knew that there were: (1) a supplier, who sold the narcotics he stored to Pannirello and Dilacio; (2) wholesalers like Pannirello and Dilacio, whom he assisted in cutting, repackaging, delivering, and storing the narcotics; and (3) customers, who purchased and further distributed the narcotics stored with him by Pannirello, Dilacio and Provitera. The fact that Gamba did not personally know each conspirator is, of course, irrelevant.

E. William Alonzo and Henry Salley

Appellants Alonzo and Salley contend that the evidence as to them showed their involvement in an isolated narcotics transaction which established neither knowledge of, nor participation in, the charged conspiracy.* These contentions simply ignore the evidence. In each case,

---

* The Court did charge that each defendant "must knowingly join the venture; he must promote it; he must have a stake in its outcome," and emphasized that association with other conspirators and knowledge of their activities was insufficient to convict (Tr. 5187-88):

[Footnote continued on following page]

there was independent evidence tending to prove that the defendant had knowledge of the broader conspiracy. Alonzo not only bought $2,000 worth of heroin from Harry Pannirello on one occasion "to start out small" —with the plain intent of buying large quantities as business developed—but also was inside Hattie Ware's apartment on at least one occasion when a delivery was made in his bedroom and in his presence from Pannirello and Provitera to Basil Hansen (Tr. 2190-93, 2971-73).

The evidence against Salley showed his participation in the conspiracy to be even more extensive. In October, 1972 Provitera and Pannirello delivered narcotics to appellant Warren Robinson. Robinson introduced Salley as "his man" and told Provitera to make future deliveries to Salley (Tr. 3025-26). Two weeks later, Provitera delivered narcotics to Salley at the Howard Johnson's in New Jersey and told Salley to inform Robinson that Pannirello would be in touch with him (Tr. 3027). A few weeks after that, at Howard Johnson's Salley told Pannirello and Provitera that Robinson was on his way. Salley was later present when, inside his motel room, Robinson gave Pannirello $19,000 in cash, complained of the quality of the "dope" previously furnished, promised Pannirello more money, and negotiated for a half kilogram of heroin, which Provitera subsequently delivered (Tr. 3029-30, 2209-11).

The so-called single transaction rule can benefit a defendant "only when there is no independent evidence tending to prove that the defendant had some knowledge of the

---

Thus, even if you find that a particular defendant associated with other defendants and you further find that the latter were participants in a conspiracy to violate the narcotics laws and that this particular defendant knew the others were engaged in such activities, this by itself would not be sufficient to find a particular defendant guilty on the conspiracy charge (Tr. 5187-88).

broader conspiracy and when the single transaction is not in itself one from which such knowledge might be inferred." *United States* v. *Agueci,* 310 F.2d 817, 836 (2d Cir. 1962), *cert. denied,* 372 U.S. 959 (1963). Alonzo's statement that he would "start out small" by buying $2,000 of heroin and his presence in his own bedroom when a delivery was made there to Basil Hansen show both his knowledge of the broader conspiracy and his intention of participating therein on a repeated and large-scale basis. Salley's presence on two occasions when narcotics were discussed, bought, and paid for and his receipt of narcotics on another occasion are similarly evidence from which the jury could reasonably infer his participation in the broader conspiracy.

POINT III

The Court Properly Admitted Evidence Concerning the Seizure of $967,450 From Joseph DiNapoli and Vincent Papa.

Appellants claim that evidence concerning the seizure of $967,450 from a suitcase in the possession of appellant Joseph DiNapoli and co-conspirator Vincent Papa on February 3, 1973 was irrelevant and should not have been admitted. Appellants DiNapoli, Inglese, Christiano, Ceriale and Pugliese also claim that the money was illegally seized. The evidence concerning the seizure was properly admitted and the money was legally seized. In any event, only DiNapoli has standing to challenge the legality of the seizure.

A. Evidence of the Seizure Was Relevant and Properly Admitted

The evidence of the seizure of the money was relevant both to show that Papa and DiNapoli had special means for acquiring large quantities of narcotics and to show their possession of the fruits of narcotics trafficking.

The evidence below established that Papa was the source of narcotics distributed by the conspiracy in this case.* There was further evidence that DiNapoli was in partnership with Papa in his narcotics venture (Tr. 2217) and that Frank Pugliese, DiNapoli's narcotics partner and wholesaler, assisted Papa in importing ten kilograms of heroin (Tr. 1456-57). The record below further reveals countless narcotics transactions, all of which were paid for with large amounts of money, always in cash.

The evidence that two key members of the conspiracy were found together in possession of large amounts of money, which has aptly been described as "the lubricant of the narcotics trade," *United States* v. *Bynum*, 360 F. Supp. 400, 419 (S.D.N.Y. 1973), shows that they had special means to deal in narcotics and is highly probative evidence of the existence of the conspiracy charged in the indictment.**

Moreover, the money in question was plainly the fruits of narcotics transactions. Some of the money was directly traceable to narcotics transactions proved at trial. Pannirello and Pugliese delivered eight to ten thousand dollars in cash to DiNapoli at 1908 Bronxdale Avenue just six weeks prior to Papa's and DiNapoli's arrest. Shortly thereafter, Dilacio was to pay DiNapoli $22,000 per kilogram for two kilograms of heroin. Dilacio later purchased another kilogram of heroin from DiNapoli for $22,000. In addition, Pugliese told his Washington customer Dawson that he paid his supplier, DiNapoli, hundreds of thousands of dollars (Tr. 2640). In February, 1972 Pannirello was unable to deliver narcotics because, he explained, his sup-

---

* That evidence is set forth at Point One, page 39, *supra*.

** "The previous possession or lack of special means, tools, apparatus, and the like, may be of probative value to show the doing or not doing of an act requiring such means." 1 Wigmore, Evidence § 88, p. 516 (3d ed. 1940).

plier had been arrested with a million dollars, a small part of which was his (Tr. 2657).

Even if the specific source of the money had not been identified, it would plainly have been admissible. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *United States* v. *LaFroscia*, 485 F.2d 457 (2d Cir. 1973).

In *United States* v. *Jackskion*, 102 F.2d 683, 684 (2d Cir. 1939), *cert. denied*, 307 U.S. 635 (1939)* this Court stated:

> It is the general view that where a defendant is on trial for a crime in which pecuniary gain is the usual motive, evidence of the sudden acquisition of money by the defendant is admissible, even though the source of the money is not traced. Commonwealth v. Mulrey, 170 Mass. 103, 49 N.E. 91; Commonwealth v. Coyne, 228 Mass. 269 117 N.E. 337 3 A.L.R. 1209; People v. Connolly, 253 N.Y. 330, 171 N.E. 393; Campanelli v. United States, 9 Cir. 13 F.2d 750; O'Shea v. United States, 6 Cir., 93 F.2d 169; Wigmore on Evidence, section 154; Wharton's Criminal Evidence, section 194. As pointed out by Mr. Justice Holmes in Commonwealth v. Mulrey, supra, such evidence may, when taken with proof of other facts, have a logical tendency to prove criminal misconduct.

---

* Appellants rely principally on *Williams* v. *United States*, 168 U.S. 382 (1897). This court in *Jackskion* rejected *Williams*. Wigmore has commented, with respect to *Williams*, "The opinion is valueless and illustrates this Court's frequent confusion of the admissibility of evidence and its effect as a presumption." Wigmore Evidence, § 154, p. 601 n. 1 (3d ed. 1940).

Similarly, reliance on *United States* v. *Falley*, 489 F.2d 33 (2d Cir. 1973) is misplaced. There the narcotics introduced related to a separate conspiracy and were introduced in a prejudicial manner.

The principle of *Jackskion* has recently been reaffirmed. *United States* v. *Tirinkian*, 488 F.2d 873 (2d Cir. 1973); *United States* v. *Trudo*, 449 F.2d 649, 651 (2d Cir. 1971), *cert. denied*, 405 U.S. 926 (1972); *United States* v. *Ravich*, 421 F.2d 1196, 1203 (2d Cir.), *cert. denied*, 400 U.S. 834 (1970).

As *Ravich* makes clear, it is for the trial judge to weigh the probative value of evidence* and his ruling will rarely be disturbed on appeal. *United States* v. *Gottlieb*, 493 F.2d 987, 992 (2d Cir. 1974). It is of no consequence that the sum was involved was large ** or the Government did not establish that DiNapoli and Papa were previously impecunious.***

B. The District Judge Properly Denied the Motions to Suppress Approximately $1,000,000 Seized on February 3, 1972

Appellant Joseph DiNapoli moved before trial to suppress approximately $1,000,000 in currency contained in a suitcase that was found in the car in which he and co-conspirator Vincent Papa were riding at the time of their arrests on February 3, 1972. After an evidentiary hearing, Judge Duffy filed an opinion denying the motion. *United States* v. *Tramunti*, 377 F. Supp. 1 (S.D.N.Y. 1974). The evidence at the hearing established that the police had ample probable cause to arrest DiNapoli and Papa for federal narcotics violations and to search the car for contraband (narcotics) which they believed it to contain.

---

* Judge Duffy received legal memoranda and heard extensive legal argument (H. Tr. 488-544; Tr. 3416-3422, 3554-3560, 3563-64).

** *United States* v. *Kenny*, 462 F.2d 1205 (3d Cir.), *cert. denied*, 409 U.S. 914 (1972) (evidence of the possession of almost $2,000,000 held properly admitted).

*** In rejecting a similar claim, this Court stated "$2,500 is a large sum of cash by almost any standard." *United States* v. *Fisher*, 455 F.2d 1101, 1103 (2d Cir. 1972).

On the evening of February 3, 1972, Patrolman John Reilly and Detective John Spurdis of the New York Joint Narcotics Task Force drove in an unmarked police car to the vicinity of 1908 Bronxdale Avenue, Bronx, New York to execute a "John Doe" narcotics arrest warrant (H. Tr. 16-21).

The reasons which led them to believe that the arrest target might be found at the Bronxdale Avenue address were these: On September 2, 1971 one Frank Facchiano had been observed by the police while engaging in two heroin sales at the Cottage Inn Bar & Grill in the Bronx, which the evidence revealed was a frequently used location for the transfer of narcotics. During these transactions, Facchiano had been observed in conversation with someone seated in a car registered to Genvieve Patalano (later identified as Joseph DiNapoli's paramour), at 1908 Bronxdale Avenue (H. Tr. 89-90, 92-93). Furthermore, in October, 1971 the owner of the Cottage Inn Bar & Grill, Joseph DiBenedetto, was observed leaving the Bronxdale Avenue address in possession of a stolen car, and when he was arrested, he falsely claimed that he resided at that address (H. Tr. 38-39, 46). Prior to the night of February 3, 1972, Reilly had been on surveillance at that address for some twenty evenings in the hope of finding "John Doe #3", one of the persons seen engaged in narcotics transactions with Facchiano at the Cottage Inn Bar & Grill (377 F. Supp. at 1).

At 8:30 P.M., Reilly and Spurdis saw an unidentified older man leave the one-family house, enter an automobile and drive off (H. Tr. 22). At 8:45 P.M., a 1968 green Pontiac pulled up in front of the house and stopped (H. Tr. 22). Joseph DiNapoli,* the passenger in the front seat, left the car carrying an apparently empty suitcase in one hand, and entered 1908 Bronxdale Avenue (H. Tr. 22-23).

---

* DiNapoli was not identified until after his arrest.

Reilly and Spurdis saw the driver of the green Pontiac make a U-turn and park the automobile. When the driver emerged from the car, Reilly and Spurdis immediately recognized him as Vincent Papa, a major narcotics trafficker and the subject of a separate investigation in which the officers were participating (H. Tr. 24). Both DiNapoli and Papa entered the house without knocking or waiting to be admitted (H. Tr. 37-38). Reilly radioed Group Supervisor Peter Pallatroni, who, accompanied by Special Agent James Reed, drove to 1908 Bronxdale Avenue. When Pallatroni arrived, Spurdis reported what he and Reilly had observed (H. Tr. 25).

Pallatroni, a highly experienced and knowledgeable narcotics agent, had been a Special Agent with the Drug Enforcement Administration* for eight years and for two years had supervised a group of ten narcotics agents (H. Tr. 87). He had participated in approximately one hundred investigations of narcotics wholesalers resulting in the arrest of more than two hundred major narcotics violators (H. Tr. 104).

Pallatroni testified that at the time of this arrest Vincent Papa was regarded by the Bureau of Narcotics and Dangerous Drugs as "one of the top narcotics traffickers" in the United States (H. Tr. 171). He knew that Papa had been convicted of violation of the federal narcotics laws and that he had been sentenced to five years in prison (H. Tr. 96).

On December 18, 1971, less than two months before the arrest of Papa and DiNapoli, Pallatroni had arrested a narcotics dealer named Stanton Garland, who thereafter provided further information about Papa's recent narcotics activities. Garland told Pallatroni and other agents that he could introduce an undercover agent to Rocco Evan-

---

* Formerly the Bureau of Narcotics and Dangerous Drugs.

gelista and Daniel Ranieri, who he said were distributing narcotics for Vincent Papa, for the purpose of purchasing a minimum of a kilogram of heroin which at that time sold for $25,000 (H. Tr. 99, 131). Garland further stated that he personally had discussed narcotics with Papa on two separate occasions (H. Tr. 98-99). Garland identified Papa, Evangelista, and Ranieri in photographs shown to him and a significant part of the information which he provided concerning them was independently corroborated by the agents.

In addition to the information supplied by Garland, Pallatroni was aware that Papa and approximately 20 other persons had been named in a federal narcotics conspiracy indictment, filed in the Eastern District of New York, which had been unsealed in January, 1972.*

Upon receiving from Spurdis the license plate number of the green Pontiac in which Papa had arrived, Pallatroni radioed the information to the headquarters of the New York Joint Task Force to ascertain the name of the record owner of the car. He was informed that the vehicle was a rental or leased car owned by Wide World Leasing Corporation of Far Rockaway, New York. Pallatroni had information that Papa owned two cars. The use of a leased or rented car by a major narcotics violator was significant. As an experienced narcotics officer, he knew that individuals engaged in narcotics trafficking and other areas of organized crime frequently used rented or leased vehicles in an effort to conceal their identity. He knew as well that many of these criminals were aware that cars used to transport narcotics or other contraband, if seized, would be subject to forfeiture, unless the owner was an

---

* Pallatroni also knew from surveillance he had conducted that Papa had a relationship with Frank Facchiano, one of the targets of the investigation which had led the officers to 1908 Bronxdale Avenue, dating back to 1967 (H. Tr. 124-125).

auto rental company, in which case cars would ordinarily not be retained by the Government (H. Tr. 102-103).*

By at least 9:00 P.M., Pallatroni, as the District Court found, "reasonably believed that a major narcotics violator was away from his usual haunts in a house which a reasonable person could suspect as having been involved in major narcotics transactions". 377 F. Supp. at 3. The events occurring shortly thereafter ripened reasonable suspicion into probable cause for belief that Papa was engaging in a major narcotics violation under the eyes of the officers surveilling the house.

At about 8:55 P.M. Reilly observed three women leave the house at 1908 Bronxdale Avenue, enter a car and drive off. They returned about 15 minutes later (H. Tr. 26).

At about 9:15 P.M. Reilly and Spurdis observed a man leave the house under surveillance and enter a car. When they communicated this information to Pallatroni, he followed the departing car in his own vehicle. When the car appeared to be travelling in a circular route, Pallatroni and Reed ceased their surveillance and immediately returned to 1908 Bronxdale Avenue (H. Tr. 105, 26). Both Pallatroni and Reed testified that they then believed that this car was being used to "take the heat off" a major narcotics transaction by diverting surveillance officers away from the scene (H. Tr. 106). Pallatroni testified that he had observed such diversionary tactics on prior occasions involving narcotics transactions (H. Tr. 106).**

---

* In fact, the evidence showed that the car had not been rented by Papa, but had been lent to him by his cousin, Charles Papa, an employee of Wides Motor Sales, while Papa's own car was being repaired.

** In fact, the evidence presented at the hearing disclosed that Pallatroni and Reed had followed an attorney who had been at the suspect premises to visit Vincent DiNapoli. The attorney,

[Footnote continued on following page]

Shortly after Pallatroni and Reed returned to the vicinity of 1908 Bronxdale Avenue, they were advised by Patrolman Reilly that two men had left the house. Each of these men entered a separate car and drove off in a fashion which prevented the officers from reading their license plates (H. Tr. 26-27).

At 9:30 P.M. Vincent Papa and Joseph DiNapoli left the house at 1908 Bronxdale Avenue. DiNapoli carried the same suitcase which he had previously brought into the house. This time, however, he carried the suitcase with both hands and walked in such a way that the suitcase appeared very heavy (H. Tr. 28). Both DiNapoli and Papa entered the green Pontiac, and DiNapoli placed the suitcase on the back seat. Papa drove the car while DiNapoli was seated in the front passenger seat. Pallatroni and Reed immediately followed in their vehicle, having been informed by Reilly that Papa had left the house with the suitcase which appeared to be heavy.

After several blocks, the Reilly-Spurdis car took the lead position in the surveillance. When the green Pontiac turned east on Tremont Avenue, Pallatroni became apprehensive about losing it and instructed Spurdis and Reilly by radio to stop Papa's car (H. Tr. 107-08, 152). Spurdis pulled his vehicle alongside the Pontiac and Reilly held his badge out the car window (about an arm's length from Papa) and shouted to Papa to pull over. Papa, however, continued to drive a few feet more. When Reilly shouted again, Papa stopped his car at the intersection of East Tremont Avenue and Castlehill Avenue (H. Tr. 29-30, 108). Spurdis drove his car in front of the Pontiac and Pallatroni stopped his car behind the Pontiac.

Murray Richman, Esq., testified at the hearing that while he did not recall the drive on February 3, 1972, he may have missed a turn on the route which could have given the impression that he was driving in a circle (H. Tr. 199-200).

Papa left the Pontiac with DiNapoli and the suitcase inside and began walking towards Spurdis and Reilly. Pallatroni concluded that this was designed to draw attention away from the car and its contents since most people remain in their cars when stopped by police officers (H. Tr. 108). At Pallatroni's instructions, Spurdis arrested Papa for violation of the federal narcotics laws. Pallatroni and Reed opened the door of the Pontiac, removed DiNapoli from the car and placed him under arrest for violation of the federal narcotics laws. After searching DiNapoli for weapons, Pallatroni returned to the Pontiac where he observed Spurdis examining the open suitcase which had been placed on the street. Pallatroni asked Spurdis whether the suitcase contained any narcotics. Spurdis said that it contained money. The suitcase weighed between 40 and 50 pounds. Papa and DiNapoli were later charged in a complaint with conspiracy to violate the federal narcotics laws (H. Tr. 64-68, 108-09).*

---

* Detective John Spurdis was called as a witness by DiNapoli at the suppression hearing. Concluding that he was a "liar" and that his testimony was "inherently incredible," Judge Duffy rejected it completely. 377 F. Supp. at 1-2. This conclusion is amply supported by the record wholly apart from the matter of Spurdis' demeanor described in the District Court's opinion. At the suppression hearing Spurdis testified that he ordered the arrest of Papa and DiNapoli despite his belief at the time that there was no probable cause to do so. This was squarely contradicted by his testimony at a prior Police Department hearing that he believed he had probable cause to stop the car and search the suitcase (H. Tr. 278-286, 367). Cross-examination established close links between Spurdis and DiNapoli. While the complaint against the latter was pending, they met on several occasions, including once in the Virgin Islands. During the period that Spurdis was ostensibly investigating DiNapoli, they, together with Mrs. Spurdis and Genvieve Patalano, developed a strikingly unusual social relationship, which included more than forty private "meetings" between John Spurdis and Ms. Patalano.

1. There was Probable Cause to Arrest DiNapoli and Papa

Probable cause to arrest is founded upon the sum total of information, observation, reports and personal experience of the arresting officer. All of these sources may be called upon by a law enforcement officer, and especially a federal narcotics agent, in his on-the-spot decision to make an arrest. *Raffone* v. *Adams,* 468 F.2d 860 (2d Cir. 1972). In *Raffone,* this Court cautioned against the error of treating in isolation each item of information known to an agent, and quoted with approval then Judge, now Chief Justice, Burger's statement in *Smith* v. *United States,* 358 F.2d 833, 837 (D.C. Cir. 1966), *cert. denied,* 386 U.S. 1006 (1967);

> "As we have often observed, probable cause is the sum total of layers of information and synthesis of what the police have heard, what they know, and what they observe as trained officers. We weigh not individual layers but the 'laminated' total. It has often been repeated, but it bears repetition, that 'In dealing with probable cause, * * * as the very name implies, we deal with *probabilities.* These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.' *Brinegar* v. *United States, supra,* 338 U.S. at 175, 69 S. Ct. at 1310, 93 L. Ed. 1879 (Emphasis added)." 468 F.2d 860, 867.

Cf. United States v. *Manning,* 448 F.2d 992 (2d Cir.) (*en banc*), *cert. denied,* 404 U.S. 995 (1971).

The Supreme Court, in *Brinegar* v. *United States,* 338 U.S. 160, 176-77 (1949), explained the meaning of probable cause in the context of a car search as follows:

> The troublesome line posed by the facts in the *Carroll* case [*Carroll* v. *United States,* 267 U.S. 132

(1925)] and this case is one between mere suspicion and probable cause. That line necessarily must be drawn by an act of judgment formed in the light of the particular situation and with account taken of all the circumstances. No problem of searching the home or any other place of privacy was presented either in Carroll or here. Both cases involve freedom to use public highways in swiftly moving vehicles for dealing on contraband, and to be unmolested by investigation and search in those movements. In such a case the citizen who has given no good cause for believing he is engaged in that sort of activity is entitled to proceed on his way without interference. *But one who recently and repeatedly has given substantial ground for believing that he is engaging in the forbidden transportation in the area of his usual operations has no such immunity, if the officer who intercepts him in that region knows that fact at the time he makes the interception and the circumstances under which it is made are not such as to indicate the suspect is going about legitimate affairs.* 338 U.S. 160, 176-77 (emphasis added).

Cf. Draper v. *United States,* 358 U.S. 307, 313 (1958).

The facts, as found by the District Court, fully justify its conclusion that probable cause existed to arrest DiNapoli and Papa. The Task Force officers conducting surveillance of 1908 Bronxdale Avenue had ample reason to believe that the house "was being used in connection with the sale and distribution of narcotics." 377 F. Supp. at 2. When Vincent Papa arrived on the scene with appellant DiNapoli carrying an empty suitcase, suspicion justifiably arose that a major narcotics transaction might begin to take place. Unquestionably, Papa was "one who recently and repeatedly [had] . . . given substantial ground for believing that he [was] . . . engaging in the forbidden transportation" of narcotics. *Brinegar* v. *United States, supra.* Papa, whom

BNDD considered a major narcotics violator, had previously been convicted of violation of the federal narcotics laws, and had been recently named in a federal narcotics conspiracy indictment returned in the Eastern District of New York, unsealed only the previous month. Furthermore, Pallatroni had received first-hand information from Stanton Garland that confirmed BNDD's belief about Papa's active and high echelon position in the narcotics trade.*

---

* There is no merit in DiNapoli's contention that Garland was either unreliable or that his information was stale. There is nothing in the record which indicates that Garland's information concerning Papa, Evangelista, or Ranieri was ever shown to be inaccurate. On the contrary, as the District Court found, "certain information which Garland gave the Joint Task Force has proven reliable", 377 F. Supp. at 2. The very fact that Garland had spoken with Papa about narcotics trafficking and had identified his photograph, as well as those of Evangelista and Ranieri (Tr. 99-100), established that his information had a reliable basis. *United States* v. *Sultan*, 463 F.2d 1066 (2d Cir. 1972).

The District Court concluded that Garland later proved unreliable because he became a fugitive rather than testify in another case and because he committed various criminal acts while supposedly cooperating with the Joint Task Force. 377 F. Supp. at 2. But as this Court recently observed, " 'Informants in drug cases are not Brahmins, nor are they noted for long-term occupancy of well-tended premises. Their disappearance, voluntary or otherwise, is not extraordinary' ". *United States* v. *Malizia*, Dkt. No. 74-1389 (2d Cir. September 17, 1974), slip op. at 5467 quoting *United States* v. *Super*, 492 F.2d 319, 322 (2d Cir. 1974).

Far more significant, however, were the facts corroborating Garland's information. Pallatroni ascertained that Papa and Evangelista were under investigation by BNDD for narcotics violations (H. Tr. 100, 181). Garland gave the agents Evangelista's address and phone number which proved to be accurate (H. Tr. 100-101). The record amply supports the District Court's finding that Garland was then an informant whose information was reliable. *United States* v. *Harris*, 403 U.S. 573 (1971); *Aguilar* v. *Texas*, 378 U.S. 108 (1964); *Draper* v. *United States*, 358 U.S. 307 (1959); *United States* v. *Comissiong*, 429 F.2d 834 (2d Cir. 1970); *United States* v. *Manning*, *supra*. In any event, "there is absolutely no indication

[Footnote continued on following page]

In sum, the house was a suspicious place, one of the visitors was a notorious narcotics violator reasonably believed to be then actively involved in high level narcotics trafficking, the suitcase (empty when DiNapoli entered the house and loaded when he left) was an obvious instrumentality and the apparently leased automobile was a circumstance reasonably suggestive in this context that a major deal was in the process of taking place. These factors, combined with the others previously described, conveyed to experienced narcotics agents a reasonable basis for concluding that a transfer of narcotics was taking place within their sight. See *United States* v. *Chaplin*, 427 F.2d 14, 15 (2d Cir.), *cert. denied*, 400 U.S. 830 (1970); see also *United States* v. *Wabnik*, 444 F.2d 203 (2d Cir.), *cert. denied*, 404 U.S. 851 (1971). Consequently, probable cause existed to arrest Papa and DiNapoli, his companion who carried the suspect suitcase.*

---

that Reilly, Spurdis, Pallatroni or Reed had any indications of his unreliability on February 3, 1972." 377 F. Supp. at 2.

Nor is there any basis for the claim that Garland's information was stale. Garland told Pallatroni, less than two months before the seizure, that Evangelista and Ranieri "were distributing narcotics for Vincent Papa" (H. Tr. 99) and that he could introduce an undercover agent to them to buy heroin at a minimum purchase of $25,000 per kilo. The recently unsealed indictment in the Eastern District further served to confirm that Garland's information was far from ancient vintage. Furthermore, Papa's visit to a house connected with a pending narcotics investigation and his prior relationship with Facchiano, who had been a principal subject of that investigation, "reinforced" what Garland had said and "colored" what Papa did on the night in question. *United States* v. *Soyka*, 394 F.2d 443, 454 (2d Cir. 1968) (*en banc*), *cert. denied*, 393 U.S. 1095 (1969).

* Knowledge that a suspect has been a narcotics dealer or offender, or has consorted with a narcotics dealer or offender, may obviously be an element of probable cause. See *United States* v. *Harris*, 403 U.S. 573, 583 (1971); *United States* v. *Oliva*, 432 F.2d 130 (2d Cir. 1970), *cert. denied*, 402 U.S. 986 (1971); *United States* v. *Wai Lau*, 329 F.2d 310 (2d Cir.), *cert. denied*, 379 U.S. 856 (1964); *cf. United States* v. *Santana*, 485 F.2d 365, (2d Cir. 1973).

As the District Court correctly concluded, the fact that certain beliefs held by Pallatroni on the night of the arrest were later proved untrue *e.g.*, that the Pontiac used by Papa was a rented or leased car, the interpretation of the attorney's circular driving pattern and his belief that the suitcase contained narcotics, did not invalidate the arrest or search, since his beliefs at the time were reasonable in light both of his experience and of the facts known to him. *Brinegar* v. *United States, supra,* 338 U.S. at 176; *Henry* v. *United States,* 361 U.S. 98, 102 (1959).

2. The Search of the Car and Suitcase Was Proper

DiNapoli also claims that, regardless of probable cause to arrest, the agents should not have opened the suitcase in the back seat of Papa's car without a search warrant, relying on the fact that upon their arrest DiNapoli and Papa were handcuffed, thus eliminating the possibility that either could obtain a weapon from, or destroy the contents of, the suitcase. This contention is contrary to the settled case law since *Chimel* v. *California,* 395 U.S. 752 (1969).

As the Supreme Court recently held, it is perfectly proper, incident to a lawful arrest, to search, either at the time of arrest or later, the person of an accused and "the property in his immediate possession" for ". . . weapons, instruments of escape and evidence of crime . . ." and to seize such items uncovered by the search. *United States* v. *Edwards,* 42 U.S.L.W. 4463, 4464-4465 (March 26, 1974). It can hardly be contended that a suitcase on the back seat of Papa's Pontiac is not within ". . . the 'grabbing-distance' ", as *Chimel* requires for a search incident to arrest, of a person sitting in the front seat. See *United States* v. *Riggs,* 474 F.2d 699, 704 (2d Cir.), *cert. denied,* 414 U.S. 820 (1973). Accordingly, the search of the suitcase was properly incident to the arrest of Papa and DiNapoli. *United States* v. *Robinson,* 414 U.S. 218 (1973);

Gustafson v. *Florida*, 414 U.S. 260 (1973); *United States* v. *Jenkins*, 496 F.2d 57, 73 (2d Cir. 1974); *United States* v. *Vigo*, 487 F.2d 295, 298 (2d Cir. 1973); *United States* v. *Riggs*, *supra*; *United States* v. *Manirite*, 448 F.2d 583 (2d Cir.), *cert. denied*, 404 U.S. 947 (1971); *United States ex. rel. Muhammad* v. *Mancusi*, 432 F.2d 1046, 1048 (2d Cir. 1970), *cert. denied*, 402 U.S. 911 (1971); *United States* v. *Frick*, 490 F.2d 666 (5th Cir. 1973); *United States* v. *Wilkerson*, 478 F.2d 813, 815 (8th Cir. 1973); *United States* v. *Maynard*, 439 F.2d 1086 (9th Cir. 1971); *United States* v. *Mehciz*, 437 F.2d 145, 146-148 (9th Cir.), *cert. denied*, 402 U.S. 974 (1971).*

It is of no avail to DiNapoli that Papa and he were in custody at the time the suitcase was removed from the car, placed on the sidewalk, and opened. *United States* v. *Edwards*, *supra*; *United States* v. *Jenkins*, *supra*; *United States ex. rel. Muhammed* v. *Mancusi*, *supra*; *United States* v. *Evans*, 481 F.2d 990 (9th Cir. 1973). In *Jenkins*, this Court held that a search of a defendant's clothing and wallet for dollar bills, in order to compare serial numbers, was reasonable despite the fact that the search took place

---

* Appellant's reliance on *United States* v. *Soriano*, 482 F.2d 469 (5th Cir. 1973), *rev'd en banc*, 497 F.2d 147 (5th Cir. 1974) is misplaced in view of the *en banc* opinion reversing the panel decision. The Fifth Circuit *en banc* held valid the search of a suitcase removed from the trunk of a car under *Chambers* v. *Maroney*, 399 U.S. 42 (1970), because the arresting officers "indisputably had probable cause to believe that the vehicle contained contraband, a circumstance justifying the initial incursion into the trunk . . ." and "this justification encompassed the search of containers in the vehicle which could reasonably be employed in the illicit carriage of narcotics." 497 F.2d at 149. In addition, twelve of the fifteen judges agreed that the search also might have been sustained as incident to a lawful arrest under the principles enunciated in *United States* v. *Robinson*, *supra* and *Gustafson* v. *Florida*, *supra*. 497 F.2d at 150.

a week after the defendant had been lodged in jail. *Jenkins, supra,* 496 F.2d at 73. This Court held that once the police had legally seized the belongings, the defendant could no longer entertain any reasonable expectation of privacy concerning them.

Quite apart from the propriety of the search as incident to a lawful arrest, there has been, since *Carroll* v. *United States,* 267 U.S. 132 (1925), universal recognition that, for purposes of the Fourth Amendment, there is a difference between a home or a store, for which a warrant may readily be obtained, and an automobile which may be removed from the jurisdiction too quickly to allow for the procuring of a warrant. The underlying rationale for this exception is that the opportunity to search automobiles, stopped on a street or highway, is "fleeting". *Chambers* v. *Maroney,* 399 U.S. 42, 51 (1970); *Coolidge* v. *New Hampshire,* 403 U.S. 443, 460 (1971); *United States* v. *Ellis,* 461 F.2d 962, 966 (2d Cir.), *cert. denied,* 409 U.S. 866 (1972); *United States* v. *Castaldi,* 453 F.2d 506 (7th Cir. 1971).

Under the "automobile" exception, warrantless searches of movable vehicles are permitted when the police have probable cause to believe that the vehicle contains seizable items. See *Chambers* v. *Maroney, supra,* 399 U.S. at 90. In such cases, a case-by-case determination of exigent circumstances is unnecessary. *Cardwell* v. *Lewis,* 42 U.S.L.W. 4928 (U.S. June 17, 1974); *United States* v. *Vigo,* 357 F. Supp. 1360, 1365 (S.D.N.Y. 1972), *rev'd on other grounds,* 487 F.2d 295 (2d Cir. 1973). Here there was ample probable cause to search the Pontiac and its contents for contraband. *United States* v. *Christophe,* 470 F.2d 865, 868-69 (2d Cir.), *cert. denied, as Pierro* v. *United States,* 411 U.S. 964 (1972); *United States* v. *Carneglia,* 468 F.2d 1084, 1089-1090 (2d Cir. 1972), *cert. denied,* as *Inzerillo* v. *United States,* 410 U.S. 945 (1973).

Alternatively, if, as here, "agents have probable cause to believe that a car is or has been used for carrying contraband, they may summarily seize it pursuant to the federal

forfeiture statutes and search it." *United States* v. *Capra*, Dkt. No. 74-1068 (2d Cir. July 26, 1974), slip op. 4985 at 5007; see *Cooper* v. *California*, 386 U.S. 58 (1967); *Carroll* v. *United States*, 267 U.S. 132 (1925); *United States* v. *Ortega*, 471 F.2d 1350 (2d Cir.), *cert. denied*, 411 U.S. 948 (1973); *United States* v. *Ayers*, 426 F.2d 524 (2d Cir.), *cert. denied*, 400 U.S. 842 (1970); *United States* v. *Francolino*, 367 F.2d 1013 (2d Cir.), *cert. denied*, 386 U.S. 960 (1967). There is "no basis for reversing the district court's holding that . . . there was probable cause to believe that the car was being used to carry contraband on the night of the arrest". *United States* v. *Capra*, *supra*, slip op. at 5008.

C. Only DiNapoli has Standing to Challenge the Legality of the Seizure

In any event, only DiNapoli, from which the money was seized, has standing to challenge the legality of the seizure. *Brown* v. *United States*, 411 U.S. 223 (1973); *Alderman* v. *United States*, 394 U.S. 165, 174 (1969); *Wong Sun* v. *United States*, 371 U.S. 471, 492 (1963); *United States* v. *Capra*, *supra*, Slip op. at 5009-10.

POINT IV

Appellant Mamone's Contention that Insufficient Pre-trial Disclosure Mandates a Reversal is Without Merit.

Mamone, alone among appellants, makes the argument that the Government's alleged failure to make sufficient pre-trial disclosure mandates a reversal of his conviction. He contends (App. Br. 44) that the Government's failure to specify its proof against him in the indictment and bill of particulars denied his Sixth Amendment right to be adequately informed of the charges against him. Specifically, Mamone

claims that he should have been informed that evidence would be offered at trial to prove the Burke transaction (see *supra* at 14), Mamone's vouching for Forbrick (see *supra* at 12), and Dilacio's remark to Barnaba naming Mamone as DiNapoli's partner (see *supra* at 16). The argument is without merit.

> "It has long been settled that an indictment is adequate so long as it contains the elements of the offense, sufficiently apprises the defendant of what he must be prepared to meet, and is detailed enough to assure against double jeopardy. *Wong Tai* v. *United States*, 273 U.S. 77 (1927); *United States* v. *Palmiotti*, 254 F.2d 491 (2d Cir. 1955). Under this test we have consistently sustained indictments which track the language of a statute and, in addition, do little more than state time and place in approximate terms. *United States* v. *Fortunato*, 402 F.2d 79, 82 (2d Cir. 1968), *cert. denied*, 394 U.S. 933 (1969); *United States* v. *Palmiotti*, 254 F.2d 491, 495 (2d Cir. 1958); *United States* v. *Varlack*, 225 F.2d 665, 669-670 (2d Cir. 1955)." *United States* v. *Salazar*, 485 F.2d 1272, 1277 (2d Cir. 1973).

Here not only did the indictment track the language of the statute, *United States* v. *Debrow*, 346 U.S. 374, 377-378 (1953), *United States* v. *Cimino*, 321 F.2d 509, 512 (2d Cir. 1963), *cert. denied* as *D'Ercole* v. *United States*, 375 U.S. 967 (1964), and furnish the approximate time and place of the crime, it went far beyond this, specifying seventeen different overt acts in furtherance of the conspiracy. There was no need to identify in the indictment the specific persons with whom Mamone dealt or spoke. Cf. *United States* v. *Spada*, 331 F.2d 995, 996-97 (2d Cir.), *cert. denied*, 379 U.S. 865 (1964); *United States* v. *Rosa*, 343 F.2d 123, 124 (2d Cir. 1965); *Llamas* v. *United States*, 226 F. Supp. 351 (E.D.N.Y. 1963), *aff'd on the opinion below*, 327 F.2d

657 (2d Cir. 1964); *United States* v. *Polakoff*, 112 F.2d 888, 890 (2d Cir.) (L. Hand, J.), *cert. denied*, 311 U.S. 653 (1940).

The bill of particulars furnished by the Government amplified overt act five of the indictment ("In or about November, 1970, the defendant ANGELO MAMONE went to the Beach Rose Social Club, Bronx, New York") by specifying the time, place, and purpose of Mamone's visit as follows:

> "*Overt Act 5*—In the evening hours of November, 1970 at the Beach Rose Social Club, 3203 Westchester Avenue, Bronx, New York. Purpose was to assist Louis Inglese in counting the proceeds of a narcotics transaction." (Government's Bill of Particulars at 2)

Moreover, the Bill of Particulars stated that Mamone entered the conspiracy in November, 1970 (Government's Bill of Particulars at 8).

Further particularization of the allegations in the indictment would have only served to require the Government to disclose its evidence in advance of trial, which is not the function of a bill of particulars. *See, e.g., United States* v. *Crisona*, 271 F. Supp. 150, 155 (S.D.N.Y. 1967), (Mansfield, J.), *aff'd*, 416 F.2d 107 (2d Cir. 1969), *cert. denied*, 397 U.S. 961 (1970); *United States* v. *Lebron*, 222 F.2d 531, 535-36 (2d Cir.), *cert. denied*, 350 U.S. 876 (1955); *United States* v. *Kushner*, 135 F.2d 668, 673 (2d Cir.), *cert. denied*, 320 U.S. 212 (1943); *United States* v. *Callahan*, 300 F. Supp. 519, 526 (S.D.N.Y. 1969); *United States* v. *McCarthy*, 292 F. Supp. 937, 940-41 (S.D.N.Y. 1968); *United States* v. *Fruehauf*, 196 F. Supp. 198, 199 (S.D.N.Y. 1961). In any event, "[W]hether a bill of particulars should be provided at all, its scope and

specificity, if permitted . . . are all matters left primarily to the discretion of the trial judge." *United States* v. *Salazar*, 485 F.2d 1272, 1277-1278 (2d Cir. 1973). Certainly Mamone has not demonstrated that Judge Duffy abused his discretion or that he suffered any specific prejudice by the denial of portions of his motion for a bill of particulars. *See* 8 Moore's Federal Practice ¶ 7.06 [2] at 7-34-35 & n. 16 (2d Ed. 1973).

Mamone contends that the allegedly insufficient pre-trial disclosure resulted in his being unable to prepare a defense because the evidence against him involved individuals who were either deceased, disabled, or fugitive.* This argument falls of its own weight as it can only be patent that even if disclosure of the Government's evidence had been made it would avail Mamone little or nothing.

---

* Mamone claims here that he could not dispute Barnaba's recounting of Mamone's intervention on his behalf with Burke because Burke died in August, 1972. There is no evidence of Burke's demise in the trial record. Mamone complains further that he was unable to dispute Barnaba's testimony that Mamone vouched for Forbrick to Inglese because Forbrick had suffered a stroke, a fact "determined in the course of trial" (App. Br. 50). Forbrick's stroke was the reason for his severance from the trial with the consent of the Government. Forbrick's severance occurred well before trial commenced (Docket Sheet, *United States* v. *Tramunti*, at 4) and no request came from any counsel, including Mamone's, that Forbrick be deposed. Finally, Mamone complains that he was prejudiced by Barnaba's testimony that Dilacio had told him that Mamone was the defendant DiNapoli's partner because Dilacio was a fugitive. The Government was as anxious as Mamone to procure Dilacio's presence at trial.

Obviously, the Government was not responsible for the absence of Burke, Forbrick, or Dilacio, and their absence is no justification for requiring further specificity in the indictment and bills of particulars. Moreover, even if Burke, Forbrick, or Dilacio had been available physically, it would have been remarkable if they had testified, since Forbrick and Dilacio were defendants and Burke a potential defendant. *United States* v. *Kahn*, 472 F.2d 272, 288 (2d Cir.), *cert. denied*, 411 U.S. 982 (1973).

Further, it is clear from the record at trial that a representative from Mr. Ellis's office spent at least a week prior to trial listening to taped debriefing interviews of Stasi and Barnaba, the only witness against Mamone (H. Tr. 118, 416). Although these tapes did not describe Mamone's role in the conspiracy, they gave clear outlines of the conspiracy and the roles of the principal participants. This information, provided in advance of trial, constituted broad and abundant pre-trial disclosure.

POINT V

The District Court's Conduct of the Voir Dire Examination Was Sufficiently Thorough to Insure a Fair and Impartial Jury.

Appellant Gamba questions the propriety of the voir dire examination conducted by Judge Duffy in two respects. First, he argues that the Court erred in failing to question prospective jurors concerning narcotics use by their relatives or close friends. Second, he argues that the Court erred in denying a challenge for cause to a juror who disclosed that his second wife's stepson was a narcotics addict. Neither of these claims can withstand serious scrutiny.

The voir dire examination conducted by Judge Duffy was both painstaking and exhaustive and was more than sufficient to elicit any evidence of bias. He questioned the jurors about their exposure to pretrial publicity, about their relationships with law enforcement officers, about their previous jury service. He asked not once but repeatedly (Voir Dire Tr. 61, 156, 204, 257, etc.) whether any of the jurors or their immediate families had been victims of crime. Most importantly, he made several specific inquiries designed to determine any existing bias

with regard to narcotics or narcotics laws. For example the Court asked:

> Now, as I indicated, this is a narcotics case. Is there any juror here who would have any bias one way or the other, for or against the defendant, for or against the government, because it is a narcotics case? (Voir Dire Tr. 326).

And again just before the jury was sworn:

> The Court: Once again, let me ask all of the jurors and prospective jurors whether because this case involves narcotics, do you feel any bias either for or against the defendants or for or against the Government or in any way be impaired in rendering a fair and impartial verdict? (Voir Dire Tr. 345).

Against this background, Gamba contends that the district court was obligated to inquire specifically into the existence of narcotics addiction among the prospective jurors, family or friends. He cites not a single case, in this Circuit or elsewhere, that demands of district judges questions of such specificity. Rather, he relies on cases such as *United States* v. *Lewin*, 456 F.2d 1132 (7th Cir. 1972) and *United States* v. *Dellinger*, 472 F.2d 340 (7th Cir. 1972), *cert. denied*, 410 U.S. 970 (1973), which hold simply that questions of the most general nature, such as, "is there any reason why you cannot be a fair and impartial juror" were inadequate to plumb the depths of jurors' biases. It is clear that Judge Duffy went beyond such generalities here. Alternatively, Gamba argues from the analogy of cases such as *Jackson* v. *United States*, 395 F.2d 615 (D.C. Cir. 1968) and *Virgin Islands* v. *Bodle*, 427 F.2d 532 (3d Cir. 1970), where the trial judge failed to ask questions which would have identified jurors who had been victimized or otherwise involved in the very crimes for which the defendant was being tried. The

analogy is scarcely compelling in light of Judge Duffy's inquiries *both* whether jurors and their families had been victimized by crime and whether they would be unable to hear a narcotics case without bias.

The arguments Gamba advances are wholly at odds with the settled doctrine of this Court that the trial judge enjoys wide discretion in conducting the voir dire. *United States* v. *Zane*, 495 F.2d 683 (2d Cir. 1974); *United States* v. *Ruggiero*, 472 F.2d 599 (2d Cir.), *cert. denied*, 412 U.S. 939 (1973); *United States* v. *Ploof*, 464 F.2d 116 (2d Cir.), *cert. denied*, 409 U.S. 952 (1972); *United States* v. *Colabella*, 448 F.2d 1299, 1303 (2d Cir. 1971), *cert. denied*, 405 U.S. 929 (1972). In *Zane* the appellants presented a similar objection to the trial court's failure to ask sufficiently specific questions of the prospective jurors. The Court's observation there is applicable here as well:

> "Of course there is always the possibility that the consciences of other jurors might have been pricked and still further-flung potential sources of bias detected through an infinite regression of questioning or through the fortuitous wording of a particular question. But no system of justice can wait upon such adventitious occurrences." 495 F.2d at 693.

In this case, the trial judge did ask questions calculated to determine any possible prejudice regarding narcotics. His inquiry was sufficient, and once an area of potential prejudice was touched upon, the Court was not required to ask questions directed at every conceivable source of such prejudice. See *United States* v. *Bradley*, 447 F.2d 224 (2d Cir. 1971); *United States* v. *Eastwood*, 489 F.2d 818 (5th Cir. 1973).

Gamba also assigns as error the District Court's refusal to entertain his challenge for cause of Juror No. 10, Mr. Pasierb. After the jury had been sworn but before the

taking of testimony had begun, Mr. Pasierb informed the court that the stepson of his wife had become a narcotics addict after he and his wife had separated (Tr. 362-363).

This contention runs squarely into this Court's statement in *United States* v. *Ploof, supra,* 464 F.2d at 118 n. 4, that "[t]here are few aspects of a jury trial where we would be less inclined to disturb a trial judge's exercise of discretion, absent clear abuse, than in ruling on challenges for cause in the empanelling of a jury." 464 F.2d at 118-119. The Government submits that no such clear abuse can be found here. Judge Duffy could certainly have concluded that the relationship between a man and the stepson of his estranged wife was far too tenous to raise any serious danger of bias, a view which Mr. Pasierb affirmed (Voir Dire Tr. 363).

POINT VI

The District Court Properly Found that a Photograph Introduced Against Hattie Ware Was Not Taken in Violation of Her Constitutional Rights.

Hattie Ware claims that a photograph depicting herself with the defendant Pugliese, introduced into evidence as part of the Government's case, was seized on the basis of information procured by the Government in violation of *Miranda* v. *Arizona*, 384 U.S. 436 (1966). This claim is without merit.

On the evening of October 3, 1973, Ware was arrested by Special Agent Martin Maguire pursuant to a federal arrest warrant. At the time of her arrest she was advised of her Constitutional rights and indicated that she understood these rights (Tr. 1021-23). Later that evening she was taken to Drug Enforcement Administration headquarters, where she was questioned by Agent John Nolan. Agent

Nolan read Ware the *Miranda* warnings again. Thereafter Ware answered a number of questions concerning her background and her acquaintance with certain other individuals. During the questioning another agent found in her pocketbook some pieces of papers with various addresses and telephone numbers and at Agent Nolan's request she readily identified all but one of these numbers. One address and telephone number, however, she refused to identify. When Agent Nolan asked whether the address was that of Basil Hansen, to whom Ware had already admitted kinship, Ware began to cry. On the basis of her refusal to answer, the agents went to the address in question where they found, in addition to other material, the photograph that Ware later sought to suppress in the District Court. Following a hearing on the matter (Tr. 1016-1052) and the receipt of memoranda of law from counsel, Judge Duffy filed a memorandum opinion denying the motion to suppress,* finding, *inter alia*, that "[t]he information she gave to Agent Nolan was given voluntarily after a full explanation of her rights."

Judge Duffy's finding that Ware acted voluntarily and with full knowledge of her rights in speaking to Agent Nolan finds full support in the record. Indeed, Ware does not contest in any way the completeness or adequacy of the warnings as to her Constitutional rights, nor does she claim that she did not understand those rights. Rather, she claims that once she indicated an unwillingness to identify the telephone number subsequently found to be Hansen's the questioning should have stopped immediately, relying on language in *Miranda* that "[i]f the individual indicates in any manner . . . that he wishes to remain silent, the interrogation must cease." 384 U.S. at 473-74.

---

* Ware argued to Judge Duffy that she had standing to complain of the search of the Hansen apartment, and that the search was conducted in violation of her Fourth Amendment rights. This claim is not renewed on appeal.

This argument ignores the context and the significance of Ware's refusal to identify the number. Up to that point she had indicated her willingness to speak with Agent Nolan and had in fact answered his questions and identified other addresses and telephone numbers. Her initial refusal to identify the Hansen number was *itself*, quite apart from the repetition of the question and the tears that followed, more than adequate to send the agents to the apartment; Agent Nolan's subsequent question to Ware establishes that he had already drawn the correct inference. While Ware had an undeniable Constitutional right not to identify the address, nothing in *Miranda* precluded the agents from asking the question and from inferring from her silence as to this point alone that the address was in some way related to the crime. None of the cases cited in Ware's brief stands for a different proposition. In *United States* v. *Crisp*, 435 F.2d 354, 357 (7th Cir. 1970), the defendant stated that he was unwilling to answer questions. Following this statement—at which point *Miranda* commands that questioning cease—the police nonetheless elicited incriminating information. The decision, and others cited by Ware, have no bearing on a case in which fruitful police investigation has arisen from the refusal to answer one specific question by a fully warned defendant who has answered all others freely. Since the District Court properly found that Ware's cooperation followed her being advised of her constitutional rights and was otherwise voluntary in every respect, the "information imparted" to the agents did not "taint" the material found in reliance on it.*

---

* Ware complains that by repeating his question after Ware refused to identify the Hansen address, and by "taking advantage of appellant's highly emotional state" (App. Br. at 12-13) Agent Nolan violated the command of *Miranda*. Assuming *arguendo* the correctness of this *Miranda* argument, it entitles Ware to no relief. Since Ware's initial refusal to identify this one number itself sufficed to alert Agent Nolan, the subsequent question and the tears it brought did not add to the inference to be drawn by Agent Nolan and thus did not "taint" his subsequent discovery of the apartment.

Even if the Court were to find that the questioning of Hattie Ware was improper and led to the seizure at the apartment, the error would be harmless beyond reasonable doubt. *Chapman* v. *California*, 386 U.S. 18 (1967), *Schneble* v. *Florida*, 405 U.S. 427 (1972). *Milton* v. *Wainwright*, 407 U.S. 371 (1972). Provitera and Pannirello both testified that on various occasions they delivered narcotics to Ware to be passed on to Basil Hansen (Tr. 2150, 2173, 2976) and on one occasion Pannirello arranged for Ware to be a conduit for funds in payment of these transactions (Tr. 2193-94). It was this evidence that demonstrated Ware's participation in the conspiracy, and this testimony constituted the Government's case against Ware. The introduction of the photograph establishing that Ware was acquainted with another defendant was merely corroborative of this showing of criminal involvement, and its admission, if error at all, was harmless.

POINT VII

The Issuance of a Bench Warrant for the Appearance of the Appellant Springer and the Introduction of the Narcotics Seized Upon Execution of the Warrant Were Proper.

A. The Bench Warrant

Appellant Springer argues that the issuance of a bench warrant for his appearance in court on December 3, 1974 before the trial judge was an abuse of discretion, that the search and seizure of narcotics found in Springer's apartment upon execution of the warrant was without probable cause, and that the narcotics and paraphernalia should not have been admitted into evidence. These arguments are frivolous.

The trial court found, with respect to the issuance of the bench warrant for the arrest of Springer that tele-

grams were sent to him notifying him that he was to appear on November 16, 1973. Upon his failure to appear on that date for a pre-trial conference, another telegram was sent on November 19, 1973 for his appearance at Courtroom 519 of the United States Courthouse on November 26, 1973 for the assignment of counsel. Both of these telegrams carried the warnings that failure to appear would result in the issuance of a warrant for his arrest. (Opinion, filed 1/17/74 at 1.)

A bench warrant issued when he failed to appear at the appointed time but was vacated when Springer appeared an hour and a half late. Springer at that time informed the Assistant United States Attorney that he was represented by counsel, but subsequently the attorney said he was uncertain about his representation of Springer and failed, upon request, to file a notice of appearance.

A third telegram was sent to Springer on November 30, 1973 instructing him to appear at 9:30 a.m. on December 3, 1973. When Springer failed to appear, a bench warrant issued and was executed on the same day. When the officers arrived at the apartment of Springer's wife, the defendant was standing behind a table apparently in the process of mixing heroin. (Opinion, filed 1/17/74 at 2; H. Tr. 572-73.)*

The trial court found specifically that ". . . more that sufficient cause for the issuance of the post-indictment bench warrants lies in the attempts to contact the defendant and his failures to appear. See Rule 9(a) of the Federal Rules of Criminal Procedure."

---

* A hearing was held on a motion to suppress the heroin and other paraphernalia found in the apartment, and the trial court found that the heroin was in plain view at the time of the arrest and therefore subject to seizure by the arresting agents.

Springer argues, for the first time on appeal, that the warrant was insufficient on its face, and therefore, void, because the warrant stated that there was an indictment charging him with failure to appear in court when requested (bail jumping) when, in fact, no such indictment was pending in the court. The pending indictment, of course, was for violation of the federal narcotics laws.

The warrant, a copy of which was introduced into evidence at the hearing to suppress the narcotics seized (GX 1, H. Tr. 445), commands the officers executing the warrant to bring the defendant forthwith "to answer an indictment" charging him with bail jumping. Appellant claims that this error, apparently clerical, voids his arrest and the seizure. Apart from the fact that this argument is presented for the first time to this Court, Springer can claim no prejudice, as there is no question that he was named as a defendant in a valid indictment, that a bench warrant was properly ordered as the indictment by Judge Duffy and that Springer knew that his failure to appear would result in his arrest. *Cf. United States* v. *Pisano,* 193 F.2d 361, 363-64 (7th Cir. 1951). Furthermore, assuming *arguendo* the invalidity of the warrant, the agents had probable cause to arrest Springer and seize the narcotics because a felony was being committed in their presence. (Opinion, filed 1/11/74 at 3.) See footnote, *infra,* at page 84. *DiBella* v. *United States,* 284 F.2d 897 (2d Cir. 1960), *vacated on other grounds,* 369 U.S. 121 (1962).

B. The Narcotics and Paraphernalia Were Properly Received in Evidence

Springer complains that the narcotics and paraphernalia should not have been received because the evidence was irrelevant to proof of the charges in the indictment.

When the narcotics and paraphernalia were introduced, the Court instructed the jury that the evidence was re-

ceived only against Springer but was not to be considered by the jury in their deliberations of the conspiracy count (Tr. 3576). If this instruction was improper, any error was against the Government and not to Springer. It is clear, under the line of cases since *Lutwak* v. *United States*, 344 U.S. 604 (1953), that the narcotics, although concededly seized from Springer after the termination of the conspiracy, were admissible to show the existence of the conspiracy. *Anderson* v. *United States*, — U.S. —, 42 U.S.L.W. 4815, 4818 (U.S., June 3, 1974); *United States* v. *Costello*, 352 F.2d 848, 854 (2d Cir.), *vacated on other grounds*, 390 U.S. 201 (1968); *United States* v. *Bennett*, 409 F.2d 888, 892 (2d Cir.), *cert. denied*, 396 U.S. 852 (1969); *United States* v. *Nathan*, 476 F.2d 456, 460 (2d Cir.), *cert. denied*, 414 U.S. 823 (1973). In any event, the introduction of the narcotics against Springer was also proper as a subsequent similar act to show intent, as the trial judge ruled. *United States* v. *Mallah*, *supra*, slip op. at 5488-89; *United States* v. *Diorio*, 451 F.2d 21, 23 (2d Cir. 1971), *cert. denied*, 405 U.S. 955 (1972). Appellant's reliance on *United States* v. *DeCicco*, 435 F.2d 478 (2d Cir. 1970) is misplaced in view of the Court's decision in *United States* v. *Brettholz*, 485 F.2d 483, 487-88 (2d Cir. 1973), *cert. denied* as *Santiago* v. *United States*, 415 U.S. 976 (1974).

---

* Springer also argues that the evidence was insufficiently connected to him and, therefore, should not have been received. This argument, apparently, based on the failure of Detective Al Cassella to identify him, is specious. Sergeant Martin O'Boyle testified that, when the door was opened to Springer's apartment, Springer, whom he identified in court, was standing behind a counter with white powder and aluminum foil on it (Tr. 3466). After O'Boyle entered, he directed Detective Cassella to seize the narcotics and paraphernalia (3468-69). Detective Cassella then collected numerous aluminum foil packets containing heroin, a plate with heroin on top of it, a strainer, two small measuring spoons, and a box of mannite (Tr. 3573). These items (GX 93 through 97) were admitted into evidence, pursuant to a stipulation identifying powder in each of the exhibits as heroin except for one foil packet identified as cocaine (Tr. 3575-76). Cassella's identification of Springer obviously does not affect the admissibility of the drugs.

POINT VIII

The In-court Identification of Appellant Salley by the Witness Provitera Was Not Tainted and Was Thus Properly Allowed.

Salley argues that the trial court should have stricken his in-court identification by the witness Provitera because, he claims, a prior out-of-court identification by Provitera of a photograph of Salley was improperly suggestive and, therefore, tainted the in-court identification. This argument is without merit.

At the hearing held to determine whether the in-court identification should be permitted, Special Agent John Nolan of the Drug Enforcement Administration testified that he showed Provitera a total of 19 pictures of black males, of which three, promptly selected by Provitera, represented the defendants Robinson, Salley, and Dawson (H. GX. 1; Tr. 3090, 3092). The picture of Salley (H. GX. 2) was roughly twice as big as the other photographs and it was the only picture that was not a "mug shot" (Tr. 3087, 3089-90). The photographs were shown to Provitera in July of 1973, the only occasion on which Provitera saw the pictures (Tr. 3083, 3085, 3091, 3095, 3102). Nolan and Provitera both testified that the photographs were handed to Provitera in a bunch and that Provitera was asked if he could identify any of the people shown (Tr. 3086-87, 3095-96).

Before the jury, Provitera positively identified Salley in the courtroom and testified that on three different occasions in the fall of 1972 he met Salley at Howard Johnson's off Route 46 in Ridgefield Park, New Jersey (Tr. 3025-30). On two of these occasions heroin was delivered by Provitera, once to Robinson in Salley's presence, and once to Salley when Salley was alone. On the third occasion, Provitera

and Pannirello waited for at least a half hour with Salley inside the Howard Johnson's restaurant until Robinson arrived and further conversation and negotiations ensued in Salley's motel room (Tr. 3025-30). On the occasions Provitera met Salley in late 1972 Salley wore glasses. The picture identified by Provitera showed Salley again wearing glasses. When Provitera identified Salley at trial, Salley was not wearing glasses (Tr. 3101).

The test for the admissibility of Provitera's in-court identification of Salley depends on whether the photographic spread he was shown more than eight months before trial was so "impermissibly suggestive as to give rise to a very substantial likelihood of misidentification." *Simmons* v. *United States*, 390 U.S. 377, 384 (1968). The inquiry under *Simmons* is two-pronged: whether the initial identification procedure was impermissibly suggestive, and if so, whether the procedure had such a tendency "to give rise to a very substantial likelihood of irreparable misidentification that allowing the in-court identification would be a denial of due process of law"; resolution of the latter issue "depends on the totality of the circumstances." *United States ex rel. Phipps* v. *Follette*, 428 F.2d 912, 914-915 (2d Cir.), *cert. denied*, 400 U.S. 908 (1970). See also *Neil* v. *Biggers*, 409 U.S. 188 (1972); *United States* v. *Evans*, 484 F.2d 1178, 1185 (2d Cir. 1973).

It is evident that there was nothing impermissibly suggestive about the photographic spread, which contained 19 photographs of black males, of whom more than one were subjects of investigation. Provitera was merely asked if he could identify any of the persons depicted and promptly identified three of the defendants, including Salley. The fact that in a group of photographs of nineteen black men Salley's picture was larger than the rest and was the only one which was not a "mug shot" was no more impermissibly suggestive than if his picture had appeared more than once, a perfectly permissible technique in photographic

spreads. *Simmons* v. *United States, supra,* 390 U.S. at 385, 386 n.6; *United States* v. *Baker,* 419 F.2d 83, 89-90 (2d Cir. 1969), *cert. denied,* 397 U.S. 976 (1970); *United States* v. *Cooper,* 472 F.2d 64 (5th Cir. 1973). Moreover, Provitera identified not only Salley's photograph but also the "mug shots" of Robinson and Dawson, proof that he was not influenced by the size or format of Salley's picture. Thus, Salley fails on the first prong of the *Simmons* test. *Cf. United States* v. *Yanishefsky,* Dkt. No. 74-1117 (2d Cir., July 30, 1974), slip op. at 5049-5050.

Moreover, even if the photographic spread had been impermissibly suggestive, Provitera's in-court identification was still properly allowed. Provitera had met Salley on three separate occasions at close quarters to execute narcotics transactions. On one of these occasions he had waited with Salley in a Howard Johnson's restaurant for a half hour until Robinson arrived, following which they had a further meeting in a motel room. Moreover, although Salley had worn glasses when Provitera met with him and had been depicted wearing glasses in the photographic spread, Provitera had no difficulty picking him out in a courtroom crowded with defendants, attorneys, Marshals, and spectators.* Provitera was positive in his identification of Salley.** Since it is thus clear that Provitera's identification was based on his recollection of Salley from their meetings and not from the photographs he viewed briefly

---

* The judge denied Salley's request for an in-court line-up, correctly noting that it would be unnecessary because "here you have a lineup in and of itself by all of these people packed into the courtroom" (Tr. 2960). *Cf. United States* v. *Zane, supra,* 495 F.2d at 699-700 (2d Cir. 1974).

** Salley's contention that Provitera misidentified another black defendant is not supported by the record. The record shows, and the trial judge stated, that, after identifying Warren Robinson as "Butch Ware", the witness said, "No, no that's not Butchie," and "immediately" and correctly identified William Alonzo, a/k/a "Butch Ware" (Tr. 2972, 2997).

eight months before trial, there was no likelihood of misidentification whatsoever,* and the in-court identification was properly allowed to stand. *Neil* v. *Biggers, supra; United States ex rel. Lucas* v. *Regan,* Dkt. No. 74-1094 (2d Cir., September 3, 1974) slip op. at 5371-5372; *United States* v. *Yanishefsky, supra; Haberstroh* v. *Montanye,* 493 F.2d 483 (2d Cir. 1974); *United States ex rel. Gonzalez* v. *Zelker,* 477 F.2d 797, 801-802 (2d Cir.), *cert. denied,* 414 U.S. 924 (1973); *United States ex rel. Smiley* v. *LaVallee,* 473 F.2d 682 (2d Cir.), *cert. denied,* 412 U.S. 952 (1973); *United States* v. *Counts,* 471 F.2d 422, 424-425 (2d Cir.), *cert. denied,* 411 U.S. 935 (1973); *United States ex rel. Robinson* v. *Zelker,* 468 F.2d 159, 163-165 (2d Cir. 1972), *cert. denied,* 411 U.S. 939 (1973); *United States ex rel. Curtis* v. *Warden,* 463 F.2d 84 (2d Cir. 1972); *United States ex rel. Bisordi* v. *LaValle,* 461 F.2d 1020, 1024 (2d Cir. 1972); *United States* v. *Fernandez,* 456 F.2d 638, 642 (2d Cir. 1972); *United States ex rel. Beyer* v. *Mancusi,* 436 F.2d 755 (2d Cir.), *cert. denied,* 403 U.S. 933 (1971).

POINT IX

Salley Was Not Denied Effective Assistance of Counsel.

Henry Salley claims that he was deprived of his right to effective assistance of counsel because of the denial by the District Court of the request for a continuance by his newly-appointed attorney following the death of his original

---

* Records establishing that Salley had stayed at the Howard Johnson's Motel in Ridgefield Park, New Jersey, November, 1972, were also admitted in evidence (GX. 107; Tr. 4265, 4339, 4419) and make it even more certain that Salley was not misidentified. *Cf. United States* v. *Mims,* 481 F.2d 636, 637 n.5 (2d Cir. 1973); *United States ex rel. Cummings* v. *Zelker,* 455 F.2d 714, 717 (2d Cir.), *cert. denied,* 406 U.S. 927 (1972); *United States* v. *Roth,* 430 F.2d 1137, 1140 (2d Cir. 1970), *cert. denied,* 400 U.S. 1021 (1971); *United States ex rel. Phipps* v. *Follette, supra,* 428 F.2d at 916.

counsel. Salley's claim, resting upon an incomplete view of both the facts and the law, is meritless.

Prior to and through the opening days of the trial, Salley was represented by Murray Segal, Esq. After the Court had been adjourned on February 5, 1974, Mr. Segal suddenly died, leaving Salley without counsel. This event was brought immediately to the attention of Judge Duffy (Tr. 969), and strenuous efforts were made by counsel for the Government and by the District Court to replace Mr. Segal in such a way that would jeopardize neither the orderly progress of the trial nor Salley's ability to defend himself. Judge Duffy first attempted to assign counsel already representing one of the other defendants, but upon representations by each of them that a conflict of interest might arise (Tr. 1003-05), the Judge determined to appoint new counsel (Tr. 1011). Harry R. Pollak, Esq., present counsel for Salley, was appointed immediately thereafter on February 6, 1974. Trial was then adjourned and no trial testimony was taken on February 6. At the beginning of trial on February 7, 1974, Mr. Pollak moved for a continuance until February 11, the following Monday, in order to have further time to prepare his case. This motion was denied (Tr. 1101).* Salley now claims that the denial of this motion so prejudiced his new counsel's ability to prepare for trial that the denial was an abuse of the District Court's discretion.** This claim ignores the context of the denial.

---

* Counsel for Salley moved at the same time for a severance for his client, and this motion was also denied by the Court (Tr. 1098). Salley now concedes that "the Court might have been correctly exercising discretion in denying a motion for a severance in a multi-defendant trial in which the attorney for one defendant had died during trial . . ." (App. Br. at 9).

** As Salley acknowledges (App. Br. at 1, 29), the law of this Circuit is that a motion for a continuance is directed to the discretion of the trial judge, and its denial will constitute grounds for reversal only upon an adequate showing that the

[Footnote continued on following page]

At the time of his appointment, Mr. Pollak did not face a situation where he was forced to represent a client who was without adequate pre-trial preparation. Salley had been represented since well before trial by Mr. Segal, and at the time of Mr. Pollak's appointment Judge Duffy arranged for Mr. Segal's file to be available to Mr. Pollak. (Tr. 1053).

Further, the Government made an extraordinary effort to provide Mr. Pollak immediately with all information normally made available to defense counsel and, additionally, with any pertinent information developed during the course of the trial up to that point (Tr. 991). Salley does not challenge the fullness of the government's response but merely claims that time available was insufficient to prepare his defense.

The asserted lack of time to prepare Salley's defense is chimerical. Although trial resumed on February 7, 1974, the day following Mr. Pollak's appointment, no testimony was introduced against Salley until February 13th, a full week after the appointment (Tr. 2006).* During this interval the Government presented evidence which only concerned Salley's co-defendants.** While Mr. Pollak's

---

Court's discretion was abused. *United States* v. *Frattini*, Dkt. No. 74-1262 (August 21, 1974) slip op. at 5332; *United States* v. *Pellegrino*, 273 F.2d 570, 571 (1960); *United States* v. *Coleman*, 272 F.2d 108, 110 (1959).

* This fact was brought to the attention of the Court during initial discussion of the question of Mr. Segal's successor (Tr. 999), and was acknowledged by Mr. Pollak during the first appearance after his appointment (Tr. 1099).

** In his brief Salley now argues that his client was prejudiced by inadequate preparation even during testimony implicating only co-defendants since "in a conspiracy case the acts of other co-conspirators are admissible against all defendants" (App. Br. 10). While Salley's statement of the law is correct, it hardly establishes any prejudice. Salley, no matter how well prepared, was in no position to impeach in any significant manner the testimony of Government witnesses which in no way im-

[Footnote continued on following page]

presence in the courtroom was undoubtedly necessary to protect his client's interests, he had ample opportunity during this period to concentrate on and prepare for cross-examination of the witnesses against his client. Thus, rather than being forced to make decisions concerning his client's strategy within hours of his appointment, as Salley contends, Mr. Pollak had a full week before the case against his client was presented.

Salley makes no showing that he was in fact prejudiced by the denial of the continuance.* Rather, relying on cases

---

plicated him in the conspiracy but rather simply detailed the criminal conduct of others. While that testimony was relevant to Salley's guilt as a member of the conspiracy, it held far greater significance for those co-defendants, represented by their own counsel, to whom it specifically referred and whose interests in attempting to impeach it were consistent with and far stronger than Salley's. *United States* v. *Weiss*, 490 F.2d 460, 469-470 (2d Cir. 1974).

* As the sole example of actual prejudice resulting from the denial of the continuance, Salley makes the extraordinary claim that since Mr. Segal, his original lawyer, told the jury in his opening statement that Salley would take the stand, Salley felt compelled to do so, thus subjecting himself to cross-examination and the introduction of certain evidence against him. The logical absurdity of this claim is patent. Mr. Segal chose to mention Salley's contemplated testimony as a matter of his own trial strategy, and neither Salley nor his present lawyer may now seek reversal on the basis of the claimed error of that choice unless Mr. Segal's representation was so poor as to represent a "mockery of justice." *United States* v. *Wright*, 176 F.2d 376, 379 (2d Cir. 1949), *cert. denied*, 338 U.S. 950 (1950); *United States ex rel. Cooper* v. *Reincke*, 333 F.2d 608, 614 (2d Cir. 1964); *United States* v. *Yanishefsky*, *supra*, slip op. at 5056-5057, hardly the case here. Whatever the harm of the decision to announce Salley's prospective testimony, the fact remains that a continuance would in no way have changed the situation, since no matter how much time Salley's new counsel would have to prepare for the problem, the opening statement had been made. Whether the jury remembered it at the end of a six-week multi-defendant trial is in any event doubtful.

from the Fourth Circuit (App. Br. 23-26), he argues that precedents in this Circuit "apparently do not require a showing of actual prejudice in the light of the strong presumption of prejudice resulting from lack of time for new counsel to prepare for trial" (App. Br. 29). That is not the test in this Circuit. *United States* v. *Maxey*, 498 F.2d 474, 482-484 (2d Cir. 1974).* And while *Maxey* involved a defendant deliberately trying to delay the trial by securing new counsel at the last moment——and Salley can hardly be accused of that--Judge Duffy was presented with as compelling reasons for going forward without a continuance as was the trial judge in *Maxey*: first, that he was presiding over a trial already in progress with many defendants, some of them in jail, and a sequestered jury and, second, that Salley would be in no way prejudiced by going forward immediately.** Moreover, the evidence against Salley, which was limited to the testimony of Provitera and Pannirello, was both powerful and by no means difficult to grasp, and such cross-examination as could be fruitful required little preparation or imagination. "There just wasn't any defense and no amount of additional time would have sufficed to create one." *United States* v. *Maxey*, *supra*, 498 F.2d at 483.

In short, this is not a case in which defendant was denied adequate time to obtain counsel of his own choice,

---

* Moreover, even if the test enunciated in the cases relied on by Salley were applicable here, the presumption is amply rebutted by the Government's efforts to assist Mr. Pollak and by the lapse of time between Mr. Pollak's assignment and the beginning of the testimony implicating Salley.

** In *United States* v. *Bentvena*, 319 F.2d 916, 934 (2d Cir.), *cert. denied* as *Mirra* v. *United States*, 375 U.S. 940 (1963), the District Court allowed a continuance of two weeks in order for new trial counsel to prepare for his case. The District Court chose two weeks in exercise of its discretion and in response to the particular problems of that trial. Nothing in the opinion of this Court suggests that the two-week period was a minimum to be observed in that or in any other cases.

e.g., United States ex rel. Maldonado v. *Denno,* 239 F. Supp. 851 (S.D.N.Y.) *aff'd.,* 348 F.2d 12 (2d Cir. 1965), *cert. denied,* 384 U.S. 1007 (1966); *United States* v. *Mitchell,* 354 F.2d 767 (2d Cir. 1966); *United States ex rel. Davis* v. *McMann,* 252 F. Supp. 539 (N.D.N.Y.), *aff'd.,* 386 F.2d 611 (2d Cir. 1967), *cert. denied,* 390 U.S. 958 (1968),** or in which a defendant was unrepresented by any attorney until less than a day before trial, *e.g., Martin* v. *Virginia,* 365 F.2d 549 (4th Cir. 1966). Rather, Salley had been represented throughout the proceedings by counsel who had obviously prepared for trial. *United States* v. *Abshire,* 471 F.2d 116, 117-118 (5th Cir. 1972). And although only Mr. Segal's notes were available, his absence was more than made up for by the presence of attorneys for many other defendants, whose interests and efforts in making Provitera and Pannirello out to be liars and knaves were as strong as Salley's ever could have been. *United States* v. *Weiss, supra,* 491 F.2d at 469.

The net of the matter is that Judge Duffy's action was directed by the very difficult circumstances which confronted him and caused Salley no prejudice. It cannot therefore be said that he abused his discretion in refusing to grant the continuance.

POINT X

Testimony about Pugliese's shooting of Paulie the Arrow and about his Imprisonment Were Relevant to the Proof of the Conspiracy and Therefore Admissible.

Appellant Pugliese argues that the trial court should not have allowed two Government witnesses to testify that he had shot co-conspirator Paul DiGregorio, a/k/a "Paulie the Arrow," in the knee. Pugliese argues also that testimony from three Government witnesses (Barnaba, Pan-

---

* Since Salley does not complain of the choice of Mr. Pollak to represent him but only of the amount of preparation time available to Mr. Pollak, these cases are inapposite.

nirello, and Dawson) about his going to jail during the period of the conspiracy should not have been received. These arguments, which ignore both the settled case law of this Circuit and the highly probative nature of this testimony, should be rejected.

The witness Barnaba testified that Pugliese had told him that he had shot Paulie the Arrow in the knee in the home of the appellant Springer (Tr. 1418). Barnaba said Pugliese told him that "the Arrow was a customer of his . . . and had shot him in the knee because he owed him money" (Tr. 1420-22). The witness Dawson testified that the Arrow told him on the occasion of their first meeting in Washington that his limp was the result of being shot by "Georgie" (Pugliese) (Tr. 2606-07). Pugliese also told Dawson he had shot the Arrow because the Arrow had been "short with the money" (Tr. 2639).

The testimony about the shooting of the Arrow was not offered or received simply to prove a "separate crime." *United States* v. *Brettholz,* 485 F.2d 483, 487 (2d Cir. 1973). It was, for two reasons, proof of the drug conspiracy charged in the indictment. First, it was evidence that the Arrow and Pugliese had dealt in narcotics together and that Springer was also involved. *United States* v. *Garelle,* 438 F.2d 366, 368-370 (2d Cir. 1970), *cert. dismissed,* 401 U.S. 967 (1971). Secondly, the shooting of the Arrow, Pugliese's narcotics courier to the defendant Robinson in Washington, was an enforcement technique used to further the purpose of the conspiracy. Indeed, the fact that Pugliese told the story to two of his principal customers was *itself* a technique, the jury could properly find, to keep his customers in line by showing them the lengths to which Pugliese would go to insure the success of the conspiracy.* *United States* v. *Bynum, supra,* 485 F.2d at 498-499.

---

* Pugliese's argument that no witness of the shooting itself testified (App. Br. at 21) is frivolous in view of Pugliese's repeating the story to his customers.

Pugliese's complaint about the proof that he went to jail in October, 1971, fails for similar reasons. First, this testimony about Pugliese was initially elicited only on the redirect examination of the witness Barnaba (1824-25), after cross-examination by counsel for Pugliese had sought to impeach Barnaba's explanation of an introduction Pugliese had given him to Dilacio and Pannirello.* Counsel for Pugliese repeatedly sought to ridicule the introduction of Barnaba to Dilacio and Pannirello (Tr. 1525-26), asking Barnaba at one point whether Pugliese made any money for the introduction. When Barnaba answered "None that I know of." Pugliese's counsel retorted, "So he did it because you were a nice guy, is that right?" (Tr. 1540). Pugliese's decision to question Barnaba in this area, on notice as he unquestionably was as to the Government's proof of his incarceration, (*See e.g.* Government's Trial Memorandum at 8) clearly opened the door to the Government to explain Pugliese's reason for the Barnaba-Dilacio and Pannirello introduction. See *United States* v. *Cole*, 334 F. Supp. 961, 966 at n. 4 (S.D.N.Y. 1971), *aff'd.*, 463 F.2d 163 (2d Cir.), *cert. denied*, 409 U.S. 942 (1972).

Moreover, the evidence of Pugliese's incarceration was clearly relevant to the proof of the conspiracy because under Pugliese's planned partnership with Dilacio and Pannirello, they were to run Pugliese's narcotics business for him and pay Pugliese a share of the profits while he was in jail (Tr.

---

* On his direct testimony, Barnaba testified that Pugliese introduced him to Dilacio and Pannirello and told them to give Barnaba narcotics on consignment (Tr. 1434). Pugliese also introduced Barnaba to Anthony Pagano as a prospective supplier for Pagano. Barnaba testified only that Pugliese said he was "going away" (Tr. 1439). Barnaba recounted other of Pugliese's preparations for going to jail without explaining the reasons for them (Tr. 1433-49 *passim*).

2115).* His machinations prior to his incarceration, therefore, are probative of his ongoing stake and membership in the conspiracy while in prison and are thus admissible. *See, e.g. United States* v. *Agueci,* 310 F.2d 817, 839 (2d Cir. 1962), *cert. denied,* 372 U.S. 959 (1963); *United States* v. *Borelli,* 336 F.2d 376, 386-87 (2d Cir. 1964), *cert. denied as Cinquegrano* v. *United States,* 379 U.S. 960 (1965). *Cf. United States* v. *Santana,* Dkt. No. 74-1080 (2d Cir., August 19, 1974), Slip op. at 5310-5311.

POINT XI

The Government's Summation Contained No Improper Argument.

Appellants Tramunti, Inglese, DiNapoli, and Mamone contend that the United States Attorney, in summation, made improper arguments to the jury and that these alleged excesses in summation require reversal of their convictions. The contention, in view of the law in this Circuit and the record in this case, is without foundation.

The claims of impropriety in the summation are substantially directed at what appellants regard as an impermissible effort to inject the prestige of the Office of the United States Attorney into the jury's deliberations (Mamone's Brief at 53). In support of this contention, appellants quote several passages from different parts of the United States Attorney's summation.**

---

* Pugliese's preparations before going to jail which involved at least 13 defendants and co-conspirators, are described in detail by Pannirello (Tr. 2152-59a, 2165-70).

** The passages complained of are as follows:

The United States Attorney characterized himself and the three Assistant United States Attorneys assisting him as "your Government's representatives" (Tr. 5029).

* * * * *

[Footnote continued on following page]

These remarks by the United States Attorney, when placed, as they must be, in the context of the trial, *United States* v. *Bivona*, 487 F.2d 443, 447 (2d Cir. 1973), were neither improper nor prejudicial. Fifteen defense counsel below gave summations for three and a half days before the United States Attorney argued the Government's case to the jury (Tr. 5029). One after another, defense counsel attacked the Government witnesses and the Government prosecutors and agents as having created the case against appellants out of whole cloth.

Counsel for appellant Inglese, Mrs. Rosner, suggested to the jury that the Government would indict her and put her client and herself in jail if, as she argued the Government had, Inglese had called any witness whose prior statements to counsel could be used to impeach his testimony. Her remarks, in pertinent part, were:

"But in deciding this case, we would like you to try us, the government. In fact, we urge you to try us. Try us with a careful review of all the facts that are before you; before you in evidence on the record, in pictures, in documents, on tapes. When you do this we submit you will find that the government and its witnesses have been entirely candid and truthful" (Tr. 5031).

* * * * *

"The only place it [fabrication of the case at trial] could have been done, according to the record, was in my office. And ladies and gentlemen, if you believe that that's the way it was, then you should spend no more than one minute in your deliberations and you should acquit all sixteen defendants" (Tr. 5042).

* * * * *

"Well, ladies and gentlemen, as the United States Attorney for this district I have a great obligation to and esteem for my client. My client is the United States. I want to leave you with the knowledge that that obligation is one to which I am firmly committed.

* * * * *

Ladies and gentlemen, we have an obligation to justice. That is my obligation, it is Mr. Phillip's, Mr. Fortuin's, Mr. Engel's in this case and in every case" (Tr. 5140).

> "You want to know something, they [the Government] wouldn't even cross-examine him. And the next day I would be indicted for suborning perjury. That is how much credit that witness would get if I called him.
>
> You see, there is a subtle process at work here and it is called all men are not created equal. Do you know that story? It's called when the government calls a witness, they are cloaked with the American flag, they have abandoned their criminal ways and they have come to do justice and that is why you are supposed to believe them. The scum that they are is left outside. When the government calls them they are credible, worthy individuals, but if a defendant would dare to call such human garbage, we would all be in jail, me and my client" (Tr. 4978-79).

These remarks go far beyond the arguments condemned by this Court in *United States* v. *DeAngelis*, 490 F.2d 1004, 1010 (2d Cir. 1974) (concurring opinion of Mansfield, C. J.), *cert. denied*, 42 U.S.L.W. 3594 (U.S., April 23, 1974). The Court's observation in *DeAngelis* of the irony that "defense counsel upon such a record, should have the temerity to attack the prosecutor's summation" 490 F.2d at 1012, is equally applicable here.

The outrageous lengths to which the defense saw fit to go were not confined to counsel for appellant Inglese. To instance only one such effort, counsel for Pugliese argued to the jury that an outburst by his client in the middle of testimony by the Government witness Dawson was more credible than the testimony of Assistant United States Attorney Walter M. Phillips, Jr., Chief of the Narcotics Unit and one of the prosecutors at counsel table:

> "And what did he [Phillips] have the nerve to tell you?

It does not refresh my recollection.*

I tell you this, when the frustration wells up in you and Butch Pugliese got up and yelled at Tennessee Dawson,** it was more to be believed than Mr. Phillips saying, 'It does not refresh my recollection'" (Tr. 4843).

These examples are not isolated ones. Counsel for Christiano said the word "truth" to the Government meant

---

* Mr. Phillips and Mr. Curran were called by Pugliese apparently to show that the supplemental Bill of Particulars filed by the Government containing the name of an unindicted co-conspirator "John Doe, a/k/a 'Georgie'" impeached Dawson, who testified he knew Pugliese as "Georgie" (Tr. 2609). Mr. Curran testified he was unfamiliar with the supplemental Bill (Tr. 3755); Mr. Phillips testified he only learned that "Georgie" was Pugliese after the filing of the supplemental Bill (Tr. 3766-67). Although Phillips did not remember the substance of what Dawson had told him and his memory was not refreshed when Pugliese's counsel showed him his notes of the interview (Tr. 3776), the fact remains that, as Pugliese's counsel knew from those notes (GX 3574), Dawson had said that the individual he identified in court as Pugliese was named "Georgie or Butch (same person)", a description which fit Pugliese perfectly. The Government offered GX 3574, but Pugliese and other defendants successfully objected.

** During the direct testimony of the witness Dawson, Pugliese stood up and threw a pen at the witness Dawson and struck him on the arm (Tr. 2624, 2625, 2628, 2631). Pugliese's unsworn testimony, for which his counsel vouched on summation, was:

"Defendant Pugliese: You fucking liar. Who knows you? You introduced me to him? Who the fuck knows you? Who knows you?

The Court: Take that man out.

Defendant Pugliese: This is a fucking frame? Who knows you, you lying bastard? Who knows you?

The Court: Take the man out.

Defendant Pugliese: Who knows you? This is the first time I saw you in my life, you fuck. My life depends on it.

He says he knows me" (Tr. 2624).

"put people in [the case]" (Tr. 4920). Counsel for Tramunti on three occasions said that the testimony of Stasi was "bought, paid for, and edited" by the Government (4995, 5008). Tolopka's counsel accused the Government as follows:

> So now we know what we are dealing with. *We are dealing with prosecution trying to cover up their own records.* They know they got the wrong man, shouldn't have involved Tolopka in this. But now they are trying to smooth out their errors, *they are trying to cover up* (Tr. 4715) (emphasis added).*

In light of these remarks, others cited below** and

---

* Appellant Inglese's claim that there was no claim made by counsel for the "appellants herein" of a "cover-up" is disingenuous and misleading since the claim was made, and made squarely. The use of the phrase "cover-up", it may be noted, carried more than its usual force in 1974, when the words were part of the currency and vocabulary vouchsafed to notoriety and posterity by the Watergate investigations and prosecutions. See e.g. Summation by Counsel for Appellant Alonzo at Tr. 4740.

** Other examples, from almost every lawyer for the defense, litter the record:

"What does an oath mean to a bum like that?" (reference by counsel for Salley to Provitera, Tr. 4518); "lowest form of animal" (description of Barnaba proffered by counsel for Springer, Tr. 4539); "two snakes" (Pannirello and Provitera, according to counsel for Ware, Tr. 4590); "a whimpering panic-stricken cur" (Tr. 4597) and "totally unregenerated creature" (Tr. 4603) (Barnaba and Provitera, according to counsel for Gamba); "Mr. Curran's office has a job to perform. . . . The agents give him a case; he has to prosecute it. He can't say 'Get out of here with that case.' He has to prosecute it. . . . [T]hese witnesses come into this office, and they have a story, not the truth, but a story . . . and they came in with this story to Mr. Curran, he had to use this story" (Counsel for Robinson, Tr. 4629); "If he [Barnaba] expected the U.S. Attorney to get up on his behalf, he'd better produce in here. And I suggest to you that's what he is doing and did. It's a production, a

[Footnote continued on following page]

more too numerous to include herein, all of which attacked the integrity of the prosecution and the government witnesses, the United States Attorney's remarks were entirely appropriate and remarkably subdued rebuttal. *United States* v. *DeAngelis, supra,* 490 F.2d at 1011; *United States* v. *Santana,* 485 F.2d 365, 370 (2d Cir.), *cert. denied,* 414 U.S. 855 (1973); *United States* v. *La Sorsa,* 480 F.2d 522 (2d Cir. 1973); *United States* v. *Benter,* 457 F.2d 1174 (2d Cir.), *cert. denied,* 409 U.S. 842 (1972). The United States Attorney, in his summation, made fair reply to the constant innuendo and repeated accusations by defense counsel that the Government had staged the case, had recklessly thrown people in, and had paid for testimony and fabricated stories. Especially in light of Mrs. Rosner's charge that the Government would indict her and her client and throw them both in jail were they to call witnesses like Stasi, it was both appropriate and modest to call attention to the duty which a United States Attorney has, a duty which, as appellants' briefs concede, was outlined by Mr. Justice Sutherland in *Berger* v. *United States,* 295 U.S. 78, 88 (1935) (See Mamone's Brief at 50-51 and Inglese's Brief at 67).

The United States Attorney's reference to the fact that the only place a fabrication of the case could have taken

---

fabrication" (Counsel for Russo, Tr. 4672); "weasel" (Counsel for Alonzo describing Pannirello, Tr. 4763); "Now, you have heard the word cover-up lots of times during this trial. Well, I suggest that Frank Stasi's testimony was a cover-up of his previous description . . ." (Counsel for Ceriale, Tr. 4784); expression of personal belief that police officer lied in order to "cover up" and lied about garbled tape (Counsel for D'Amico, Tr. 4816-17); accusation that the Government changed testimony of witnesses to suit its theory of case (Counsel for DiNapoli, Tr. 4852, 4854, 4860, 4865); argument wholly apart from the record by Mamone's counsel that (1) chemist didn't find heroin in Beach Rose (Tr. 4890) and (2) unidentified woman in audience was in fact his client's wife (Tr. 4904-05) and that the Government was "throwing" Mamone into conspiracy and hoping "it might stick" (Tr. 4886).

place was in his Office was clearly supported by the record, as the United States Attorney was at great pains to describe (Tr. 5040-42). It was clearly a proper argument, therefore, in view of the name-calling and the liberties with the record which defense counsel repeatedly took. *United States* v. *LaSorsa, supra.* There, as here, the defense ridiculed and deprecated Government witnesses ("stars of a little play," "creeps," "the gem of gems," and "what a beauty"), which this Court characterized as "open insinuations that the Government has without justification, staged a framed prosecution." 480 F.2d at 526. The Assistant United States Attorney had then argued responsively that the Government had not "framed" the defendants and that, if the jury thought the Government had done so, it should acquit them. This Court stated, "In view of these attacks against the very integrity of the prosecution the prosecutor was certainly entitled to reply with rebutting language suitable to the occasion." *Id.* In the present case the insinuations of frameup and rehearsed perjury were even more direct and thus appropriately rebutted.

Defense counsel invited the United States Attorney's urging of the jury to "try us, the Government" (Tr. 5031). The argument made by the United States Attorney, however, did not seek to rest on the Government's prestige; it urged the jury to consider "the record, the record, the record . . . Please don't speculate . . . Please stick with the record. Stick with the facts. That is all we can ask" (Tr. 5031). These statements were not bold appeals to bias or insinuations about the Government's good conduct. References to the trial record and its importance to the jury were repeated fully 62 times in the Government's summation (Tr. 5028-5141, *passim*). Repeatedly, the United States Attorney told the jury that it was its recollection of the facts which governed (Tr. 5076, 5091, 5099, 5104, 5106, 5108, 5117, 5123).

Finally, appellants contend that the Government made two inflammatory and prejudicial remarks: the first involving the presence of Vincent DiNapoli, brother of the appellant and associate of appellant Tramunti, among the spectators in the courtroom. This remark, fully and undisputedly supported by the record (Tr. 435), is asserted to have been an "attempt to inject an atmosphere of intimidation and criminality into the courtroom" (Mamone's Br. at 53). This contention is absurd. The United States Attorney merely asked the jury to use its common sense in considering his presence. Later in his summation, the United States Attorney said that "Vincent DiNapoli came to Court. He didn't come to testify, no" (Tr. 5129). This statement merely called attention to the fact that Vincent DiNapoli heard the entire Stasi testimony about the incident at the Bon Soir and did not take the stand to refute Stasi's account, even though Stasi testified that it was Vincent DiNapoli who told him to come and was present the whole evening. The Government's remark was no more than a suggestion to the jury that, if Stasi were lying about the Bon Soir incident, the defense could have refuted it with Vincent DiNapoli. It was surely proper for the jury to infer from this that Stasi told the truth about that incident specifically and about his narcotics activities generally.* Nor was the argument an impermissible reference to the failure of most of defendants to testify. The law in this Circuit, *United States* v. *Dioguardi*, 492 F.2d 70, 82 (2d Cir. 1974), is that "'remarks concerning lack of contradiction are forbidden only in the exceedingly rare case where the defendant alone could possibly contradict the government's testimony.'"

Appellants' complaint concerning the statement of the United States Attorney that it would be absurd to assume

---

* Tramunti's contention (App. Br. 68-69) that there was no suggestion that the incident didn't happen does not withstand the implications of his counsel's argument on summation (Tr. 5017).

Dawson could help himself by committing perjury is also unavailing. The jury knew that Dawson was a defendant in this case who had pleaded guilty before Judge Duffy (Tr. 2663). The fact that it was Judge Duffy who was going to sentence Dawson was readily inferable, and in any event perjury by Dawson would not have helped him before any judge. Moreover, although counsel voiced innumerable objections during and after summation, no objection was made to the remark now claimed to have been so prejudicial. *United States* v. *Socony-Vacuum Oil Corp.*, 310 U.S. 150, 238-239 (1940); *United States* v. *Perez*, 426 F.2d 1073, 1081 (2d Cir. 1970), *aff'd.*, 402 U.S. 146 (1971).*

POINT XII

The Trial Court's Marshalling of the Evidence Was Proper and Well Within its Discretion.

Mamone, alone among appellants, complains that the marshalling of the evidence by the District Court was prejudicial to him and warrants a reversal of his conviction. This argument is without merit.

The trial judge in this case was faced with the difficult task of summarizing an enormous volume of evidence adduced during an eight-week trial in which well over one hundred exhibits were introduced and over five thousand pages of testimony taken. His proper task was to cull from this mass that evidence which would most likely aid the jury in focusing on particular aspects of the proof adduced in order to make his charge on the law more intelligible. *United States* v. *Light*, 394 F.2d 908, 911 (2d Cir. 1968). A trial judge may summarize and comment upon the evidence within the broad exercise of his discretion.

---

* DiNapoli's lawyer did ask the next day for a charge on Dawson's credibility (Tr. 5147), and this was granted in substance (Tr. 5157, 5162).

United States v. *Tourine*, 428 F.2d 865 (2d Cir. 1970, *cert. denied*, 400 U.S. 1020 (1971). The *Tourine* Court stated:

> So long as the trial judge does not by one means or another try to impose his own opinions and conclusions as to the facts on the jury and does not act as an advocate in advancing factual findings of his own, he may in his discretion decide what evidence he will comment upon. *Id.* at 869.

Mamone does not argue here that the trial judge sought to impose his own opinions on the jury or that he acted as an advocate in advancing his own findings; he argues merely that the marshalling was defiicient because of the way in which the trial judge summarized the facts. However, in this, as in most trials, the Government introduced far more evidence than the defense, and the judge was not required to devote equal time to the Government's and defense cases. *United States* v. *Edwards*, 366 F.2d 853, 868 (2d Cir. 1966), *cert. denied* as *Jakob* v. *United States*, 308 U.S. 966 (1967); *cf. United States* v. *Dardi*, 330 F.2d 316, 330 (2d Cir.), *cert. denied*, 379 U.S. 845 (1964). Indeed, if Mamone's "equal time" argument had any theoretical merit at all, and it does not, such a notion is no help to Mamone. Mamone's affirmative "defense" consisted solely of some meaningless moving company documents and his counsel's references to such "facts" as Burke's death and Mrs. Mamone's identification, which were not even a matter of record. In any event, to the extent that he failed to emphasize any of the arguments which Mamone now makes, Judge Duffy was clearly acting within his acknowledged discretion.

Moreover, here, the Judge concluded his marshalling as follows:

> . . . [I]n this attempted summary of the evidence before you I have not tried to recall to your attention all of the testimony of all of the witnesses. . . .

> These are duties completely within your purview and I will not interfere with your province. And if through some inadvertence I misstated some evidence, as well I might, please, please disregard any such statement by me that does not accord with your recollection of what the evidence was" (Tr. 5320-5322).

On this record, and with the final explicit caution to the jury, the trial judge displayed an extraordinary awareness and sensitivity to the multi-defendant conspiracy problem presented. *United States* v. *Edwards, supra,* 366 F.2d at 869.

POINT XIII

The Trial Court's Refusal to Instruct the Jury as to the Evidentiary Value of Stasi's Prior Inconsistent Statements Was Not Error, or at Most, Harmless Error.

Appellant Tramunti argues that Stasi's explanation of his prior inconsistent statements—"I was afraid of Carmine Tramunti at the time" (Tr. 885)—should have been accompanied by a cautionary instruction by the Court. The Court's refusal to charge as Tramunti requested was proper.

Stasi testified on direct examination that Inglese told Tramunti that he was expecting "goods" (narcotics) and needed some money from Tramunti (Tr. 384). On cross-examination by counsel for Tramunti, Stasi was questioned extensively about using the word "something" instead of "goods" in his debriefings by New York City detectives (Tr. 523-25, 532-39). On redirect examination, Stasi said he was "afraid" of Tramunti at the time he was debriefed.

After this testimony, counsel for Tramunti moved for a mistrial, which was denied, but he failed to request an instruction at the time that Stasi's explanation was to be

considered only as a state of mind. More than four weeks later, Tramunti requested that, during the eight-hour charge to the jury, the judge give the virtually incomprehensible instruction the denial of which he now alleges to be error requiring reversal (App. Br. 60-61).*

The rule in the Second Circuit is that a witness' explanation of prior contradictions or refusals to testify for the Government is admissible and should be accompanied by instruction that such an explanation is to be considered only as to the issue of the witness' state of mind. *United States* v. *Malizia*, Dkt. No. 74-1389 (2d Cir. September 17, 1974), slip op. at 5467; *United States* v. *Cirillo*, 468 F.2d 1233 (2d Cir. 1972), *cert. denied*, 410 U.S. 989 (1973); *United States* v. *Franzese*, 392 F.2d 954, 959-61 (2d Cir. 1968), *vacated on other grounds*, 394 U.S. 310 (1969); *United States* v. *Berger*, 433 F.2d 680 (2d Cir. 1970), *cert. denied*, 401 U.S. 962 (1971). The rationale for allowing the rehabilitation of an impeached witness is explained by Wigmore:

> [An] "impeached witness may always endeavor to explain away the effect of [a] supposed inconsistency by *relating whatever circumstances would naturally remove it.*" 3A Wigmore, Evidence § 1044, p. 1062 (Chadbourn rev. 1970) (emphasis supplied).

Unlike the facts in *Berger*, *Cirillo* and *Franzese*, *supra*, cited in support of appellant's contention, Stasi merely testified to being "afraid" with no elaboration about the reasons for his fear—no threats as in *Franzese*, *supra*, 392 F.2d 954, 59-60, no conversations with others about murder

---

* Tramunti concedes that the defense in this case cross-examined Stasi at length as to his prior inconsistent statements to police officers (App. Br. 61). Six different defense attorneys cross-examined Stasi over a four-day period employing massive amounts of 3500 material, principally taped interviews of Stasi by police officers (GX 3512 through GX 3533).

as in *Cirillo,* 468 F.2d 1233, 1240, and no relation of the agent's fears for the witness, as in *Berger,* 433 F.2d 680, 683 n. 9.

Any instruction, such as the one requested below charging that Stasi's explanation was relevant only to his state of mind, and not admissible for the truth of the matter, would have been redundant since that was obvious from Stasi's answer. Obviously, fear is a state of mind, and Tramunti's instruction would only serve to highlight to the jury any prejudice resulting from Stasi's statement.

Finally, failure to give the charge here, if error, was harmless. *United States* v. *Malizia, supra.* In *Malizia,* where no instruction was given, a much more serious risk of prejudice was presented because there the witness was not even present to be cross-examined concerning his fear of being killed. *United States* v. *Malizia, supra,* slip op. at 5466-67.

POINT XIV

The District Court Properly Exercised its Discretion in Imposing Sentence on Springer.

Springer complains that the sentence imposed on him by the District Court was unduly harsh and that its imposition was based partly on conclusions which have no basis in the record. This argument is without merit.

The trial court sentenced Springer to concurrent terms of fifteen years imprisonment, to be followed by three years special parole, on the conspiracy and substantive counts (Counts 1 and 19) on which Springer was convicted. This was half of the possible punishment Springer could have received, for Judge Duffy might have made the sentences consecutive. Judge Duffy's reliance on the testimony at trial in arriving at the sentence was completely permissible.

United States v. *Tucker*, 404 U.S. 443, 446 (1972); *United States* v. *Needles*, 472 F.2d 652, 655 (2d Cir. 1973); *United States* v. *Sweig*, 454 F.2d 181, 184 (2d Cir. 1972). Since the sentence was within the statutory limits and not based in any way on impermissible factors, it is not open to review in this Court. *Dorszynski* v. *United States*, ——— U.S. ———, 42 U.S.L.W. 5156, 5161 (June 26, 1974); *United States* v. *Velazquez*, 482 F.2d 139, 142 (2d Cir. 1973).

POINT XV

Appellants' Other Claims Are Without Merit.

Tramunti cites as error below the refusal of the Court, upon timely motion, to strike overt acts 15, 16 and 17. This contention is without merit. The conversation between Tramunti and Inglese was clearly an act in furtherance of the conspiracy charged in Count One. *United States* v. *Armone*, 363 F.2d 385, 400-401 (2d Cir.), *cert. denied*, 385 U.S. 957 (1966). The activities of D'Amico and Lessa charged in overt acts 16 and 17 were also in furtherance of the conspiracy. D'Amico went to the Centaur to meet with Stasi, who delivered cocaine Inglese had received from Spada, and Lentini's meeting with Lessa was for delivery of narcotics for Inglese. In any event, proof of *any* of the overt acts charged was sufficient to support the verdict. *United States* v. *Smith*, 464 F.2d 1129 (2d Cir.), *cert. denied*, 409 U.S. 1023 (1972).

The argument by Inglese, Christiano and Ceriale that the Government's "witness sheets" should have been treated as statements of a witness pursuant Title 18, United States Code, Section 3500 has been expressly rejected by this Court. *United States* v. *Myerson*, 368 F.2d 393, 395-96 (2d Cir. 1966), *cert. denied*, 386 U.S. 991 (1967).

CONCLUSION

The judgments of conviction should be affirmed.

Respectfully submitted,

PAUL J. CURRAN,
United States Attorney for the Southern District of New York,
Attorney for the United States of America.

THOMAS M. FORTUIN,
THOMAS E. ENGEL,
FREDERICK T. DAVIS,
JEREMY G. EPSTEIN,
LAWRENCE S. FELD,
JOHN D. GORDAN, III,
Assistant United States Attorneys,
Of Counsel.

TEE:mb
d-391

AFFIDAVIT OF MAILING

STATE OF NEW YORK) ss.:
COUNTY OF NEW YORK)

THOMAS E. ENGEL, being duly sworn, deposes and says that he is employed in the office of the United States Attorney for the Southern District of New York.

That on the 10th day of October, 1974 he served a copy of the within Brief by placing the same in properly postpaid franked envelopes addressed to:

HERBERT S. SIEGAL
17 John Street
New York, New York 10038

ROSNER, FISHER and SCRIBNER
401 Broadway
New York, New York 10013

ROBERT L. ELLIS
17 East 63rd Street
New York, New York 10021

STEVEN B. DUKE
127 Wall Street
New Haven, Conn.

THEODORE ROSENBERG
31 Smith Street
Brooklyn, New York 11201

ROBERT B. FISKE, Jr.
1 Chase Manhattan Plaza
New York, New York

GEORGE DAVID ROSENBAUM
51 Chambers Street
New York, New York 10007

MICHAEL G. DOWD
120-10 Queens Boulevard
Kew Gardens, New York

ROBERT LEIGHTON
15 Park Row
New York, New York 10038

TEE:mb
d-391

AFFIDAVIT OF MAILING con. -2-

GARY R. SUNDEN
401 Broadway
New York, New York 10013

EDWARD PANZER
299 Broadway
New York, New York

MARTIN JAY SIEGEL
250 W. 57th Street
New York, New York

HARRY R. POLLAK
299 Broadway
New York, New York 10007

And deponent further says that he sealed the said envelopes and placed the same in the mail drop for mailing outside the United States Courthouse, Foley Square, Borough of Manhattan, City of New York.

Thomas E. Engel

Sworn to before me this

10th day of October, 1974

Gloria Calabrese

GLORIA CALABRESE
Notary Public, State of New York
No. 24-0535340
Qualified in Kings County
Commission Expires March 30, 1975